21-1/pt. 2

Veterans Benefits Administration
Department of Veterans Affairs
Washington, D.C. 20420

M21-1, Part II

1. Transmitted is Part II, "Clerical Procedures," to Veterans Benefits Administration Manual M21-1, "Adjudication Procedures - Compensation and Pension, Dependency and Indemnity Compensation, Accrued Amounts , Burial Allowances, Special Benefits."

2. RESCISSIONS:

a. Complete: Changes 56, 59 and erratum, 62, 63, 66, 69 and 71 to M23-1, part I; Interim Issues 23-80-5, 23-82-1, 23-82-3, 23-82-6, 23-82-11, 23-83-3, 23-84-1, 23-84-3, 23-85-3, 23-85-5, 23-85-7, 23-85-8, 23-86-4, 23-86-5, 23-86-6 and 23-88-3; Circulars 20-87-19, Revised, and 20-89-28.

b. Partial: M23-1, part I, paragraphs 6.01 through 6.07, 6.10 and 6.11, 9.01 through 9.08, 9.11 through 9.20, 9A-1 through 9A-6; paragraph 3 to Circular 20-83-25 Appendix C.

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Chief Benefits Director

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FOREWORD

This manual is designed to provide procedures for the adjudication of claims for pension, compensation, dependency and indemnity compensation, accrued benefits and burial allowance. It is intended eventually to replace the current M21-1 which will hereafter be referred to as M21-1, part I. Part II is the first of a planned six parts that, with the publication of the final part, will totally rescind the current M21-1.

The revised part I will deal with the responsibilities of the Authorization activity and the Rating Board. Part II deals with the responsibilities and actions of clerical personnel. Part III will deal with items such as claims development, evidence requests and areas where clerical and authorization functions tend to overlap. Part IV will pertain to responsibilities that fall totally within the realm of authorization, such as award processing and disallowances. Part V will be a completely new area dealing with computer processing concepts to provide a comprehensive view of the Target system. Part VI will deal with all aspects of the Rating Board.

Material in this manual is divided into numbered chapters as listed in the contents. Chapters are subdivided into subchapters where appropriate. Paragraphs are given a decimal number starting with the digit 1. The digit or digits to the left of the decimal indicate(s) the chapter number, and digits to the right of the decimal, beginning with .01 in each chapter, indicate main paragraphs. Pages are numbered from 1 within each chapter, e.g., 1-1, 2-1.

Revisions will be issued in increments no smaller than subchapters. When a change is needed, the entire subchapter, chapter or part will be changed and replaced. Changed pages will carry the date and number of the change.

References to material in part I will so state, e.g., part I, paragraph 56.01. References to material contained in part II of the manual will require only a paragraph citation, e.g., paragraph 1.05. Since each part will be issued as completed, there will be no references to unpublished parts.

Deviation from any of the prescribed procedures without prior authorization of the Chief Benefits Director is prohibited.

ETHICAL CONDUCT

Adjudication Division employees engage in decision making that results in annual expenditures of billions of dollars. Most of these decisions involve exercise of varying degrees of discretionary authority and are made with a minimum of supervision. Consequently, 38 CFR 0.735-1 has particular applicability to Adjudication Division employees and is cited verbatim:

"For proper performance of the Government business and the maintenance of confidence by citizens in their Government, employees and special Government employees in the Department of Veterans Affairs maintain the highest possible standards of honesty, integrity, impartiality, and conduct. They shall avoid misconduct and conflicts of interest through informed judgment, as an indispensable means of the maintenance of these high standards."

Adjudication employees must constantly guard against taking part in decisions involving themselves, personal friends or relatives, either directly or indirectly, and must scrupulously avoid any action which can be construed as an effort to influence decisions in such cases. Not only must there be no impropriety, but preservation of the public trust demands that even that which has the appearance of impropriety must be meticulously shunned.

Standards of ethical conduct and related responsibilities are contained in 38 CFR 0.735-1 - 0.735-85.

RESCISSIONS

1. Manuals

M23-1, part I, changes 56, 59 and erratum, 62, 63, 66, 69 and 71; paragraphs 6.01 through 6.07, 6.10, 6.11, 9.08, 9.11 through 9.20, 9A-1 through 9a-6.

2. Interim Issues

II 23-80-5
II 23-82-1
II 23-82-3
II 23-82-6
II 23-82-11
II 23-83-3
II 23-84-1
II 23-84-3
II 23-85-3
II 23-85-5
II 23-85-7
II 23-85-8
II 23-86-4
II 23-86-6
II 23-88-3

3. Circulars

Circular 20-87-19, Revised
Circular 20-89-28
Paragraph 3 of Appendix C of
Circular 20-83-25

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5. FNOD PROCESSING

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CHAPTER 1. CLAIMS ESTABLISHMENT AND MAIL MANAGEMENT

SUBCHAPTER I. CLAIMS ESTABLISHMENT

1.01 GENERAL

This chapter provides procedures concerning workflow control within the Adjudication Division. It provides instructions for establishing automated controls and directives for mail management.

1.02 THE TARGET COMPUTER SYSTEM

The primary tool used in the adjudication process is a computer claims processing system called the Benefits Delivery Network (BDN). It is commonly referred to as the "Target System." This automated system also facilitates workflow control. Use the Target System to control all issues unless otherwise directed in this manual. Establish an automated control on all claims or issues within 7 calendar days of receipt in the division. Maintain the control until final action is taken on the claim or issue. The following procedures are premised on a good working knowledge of the Target System. For additional information on the working of this system, consult the lessons available using the Target System LERN command.

1.03 BASIC PRINCIPLES FOR ESTABLISHING TARGET CONTROLS

a. Use the following procedures to establish and maintain controls on all pending claims or issues. Establish a Target System pending issue control as part of the initial action taken in connection with the claim or issue. (EXCEPTION: In death cases, DO NOT assign a new file number for the purpose of maintaining Target control until the minimum information required by paragraph 5.11 is of record.) Control establishment includes identification of the end product involved, the type of control needed and the applicable control period. The establishment process also includes a review of any already-existing Target System pending issue controls for the same file number to ensure that the claim is not related to an existing controlled issue.

b. The pending issue establishment process enables the operator to set up a working computer file to hold the claim data entered. This file is stored in a subsystem of Target called the Pending Issue File (PIF). This process also establishes a pending end product with controls. Authorization of the completed action lifts the control and automatically generates end product credit.

1.04 TARGET COMMANDS

Establish a Target pending issue control using one of the commands listed below.

a. CEST is the acronym for Claims ESTablishment. Use the CEST command to establish a PIF record in the Target System as an original or reopened claim control if there is no active master record for the benefit claimed. It also creates a BIRLS record if none exists. A PIF record must be established before an original award or disallowance can be processed in the system.

b. PEST is the acronym for Pending Issue ESTablishment. Use the PEST command (also see subpar. c.) to establish a PIF record on supplemental claims or issues if there is an active master record for the benefit claimed.

c. The PEST process is also accomplished through the following commands:

(1) CDAT is the acronym for Claims DATa Entry. Under CDAT, the operator enters all the required data to determine eligibility and entitlement, to establish dependency status, to award benefits and to amend running awards.

(2) CADJ is the acronym for Claim ADJudication. Under CADJ, the same functions are performed as under CDAT with the addition of award and disallowance preparation. Use of this command is restricted to personnel classified as claims examiners.

d. Master record types are discussed in part I, chapter 15. If a pending issue already exists under the same file number, the Payee Selection (S02) screen will be displayed during the issue establishment process.

1.05 INITIAL CLAIMS ESTABLISHMENT (CEST) PROCEDURES

Initial claims establishment requires completion of at least four Target screens - a Ready screen, a Veterans Identification Data (VID)-BIRLS screen, a claims establishment (102) screen and a Disposition (S99) screen. A Presidential Memorial Certificate (PMC) screen must also be completed in death claims. (See par. 1.05e.) Some claims require completion of more than one BIRLS screen. If the PIF contains a previously established claim, a Payee Selection Screen (S02) will be displayed at some point in the CEST process. Step by step processing is explained below.

a. **Completion of the Ready Screen.** If a file number is available, the required entries are: command, password, file number, end product code, benefit, stub name (if the payee number is not 00) and the veteran's full name. If the file number is not available, complete as many of the following fields as possible: Social Security number, service number, insurance number, date of birth, branch of service and service dates. (See figs. 1.01, 1.02 and 1.03.)

(1) Benefit types are abbreviated for Target purposes. Use CPL for a veteran's disability claim (compensation or pension) or apportionment claims against the veteran. Use CPD for a claim based on a deceased veteran's service (DIC, death pension, death compensation and burial benefits). Codes for vocational rehabilitation or education benefit claims are designated by program of participation. Use CH30 for Chapter 30, CH31 for Chapter 31, CH32 for Chapter 32, CH35 for Chapter 35, 106 for Chapter 106 (of Title 10 U.S.C), 901 for Section 901 (of PL 96-342), and 903 for Section 903 (of PL 96-342).

(2) Always enter the applicable end product code (e.g., 110, 120, etc., or 116, 126, etc. for foreign cases established at WRO or Houston RO). The system does not increment end products (e.g., 121-125 for domestic cases, 127-129 for foreign cases). If the operator enters a basic end product and one already exists, the message DUPLICATE ISSUE EXISTS - INCREMENT EPC UNLESS 700 SERIES. START NEW COMMAND WITH PA2 KEY will be displayed. The operator must then determine the next end product increment and enter it with all other required entries on the new Ready screen. See M21-4, appendix C, for further information regarding end products.

(3) Third-digit modifiers are also used for end products 110, 120 and 140 to identify certain specific issues. Use the following third-digit modifiers if a claimant asserts a disability arising from one of the listed conditions:

MODIFIER	ISSUE
2	Radiation
3	POW Status
4	Delayed Stress Syndrome
5	Agent Orange Exposure

(4) The station security officer establishes control on a claim from a person whose case is maintained under security control. (Target security control is explained in M23-1, Part V. Security for employee and other classes of restricted access records is discussed in paragraph 3.04.) Hand carry the claim or issue to the security officer for this purpose. Any future processing or access to that person's record will require the appropriate security level.

READY

COMMAND CEST XXXX

SCREEN NUMBER
FILE NUMBER 987654321
PAYEE NUMBER 00
END PRODUCT CODE 110
BENEFIT CPL
STUB NAME
FULL NAME
  FIRST IVAN
  MIDDLE D
  LAST ADJUDICATOR
  SUFFIX
SOC SEC NUMBER
SERVICE NUMBER BRANCH EOD RAD
DATE OF BIRTH DATE OF DEATH
REGIONAL OFFICE
INSURANCE NUMBER
REQUESTOR ID

Figure 1.01. CEST Ready Screen-Vet w/ C# Known

```
                                READY

COMMANL              CEST  XXXX

SCREEN NUMBER
FILE NUMBER
PAYEE NUMBER         00
END PRODUCT CODE     110
BENEFIT              CPL
STUB NAME
FULL NAME
  FIRST              IVAN
  MIDDLE             D
  LAST               ADJUDICATOR
  SUFFIX
SOC SEC NUMBER       987654321
SERVICE NUMBER       999999          BRANCH A       EOD 04011981   RAD 03311984
DATE OF BIRTH        12251962        DATE OF DEATH
REGIONAL OFFICE
INSURANCE NUMBER
REQUESTOR ID
```

Figure 1.02. CEST Ready Screen-Vet C# Unknown

```
                                READY

COMMAND              CEST  XXXX

SCREEN NUMBER
FILE NUMBER
PAYEE NUMBER         10
END PRODUCT CODE     190
BENEFIT              CPD
STUB NAME            I D ADJUD
FULL NAME
  FIRST              URSULA
  MIDDLE             R
  LAST               ADJUD
  SUFFIX
SOC SEC NUMBER       987654321
SERVICE NUMBER       999999          BRANCH A       EOD 04011981   RAD 03311984
DATE OF BIRTH        12251962        DATE OF DEATH
REGIONAL OFFICE
INSURANCE NUMBER
REQUESTOR ID
```

Figure 1.03. CEST Ready Screen-Death Claim w/ C# Unknown

b. **Completion of the BIRLS screens.** Entries on the Ready screen produce a BIRLS Veteran Identification Data (VID) screen. Compare the information displayed with the current claim or issue to ensure that the record displayed is that of the veteran on whose service the claim is based. (See fig. 1.04.)

(1) If it is not the correct veteran's record, terminate processing by entering "END" in the NEXT SCREEN field. If the correct BIRLS record is

shown, check the data for accuracy and completeness. Change any incorrect data based on verified data accompanying the claim. CHARACTER OF SVC and SEP REASON CODE are particularly important.

(2) Determine if a claims folder already exists. If it does not, note the message at the bottom of the VID screen directing the establishment of a folder under the file number displayed. A print of the screen is automatically generated. If a folder already exists and it is not located on station, use the LOC screen to request transfer if the claim is from a veteran or the BID screen if the claim is from another beneficiary. Enter LOC or BID in the NEXT SCREEN field to access those screens.

(3) When establishing a death claim, the VID screen is displayed in the Notice of Death (NOD) format. (If the BIRLS database does not locate an existing record, see par. 5.11 before assigning a new file number.) If the Date of Death was not previously entered under the FNOD command, enter it and the other death related entries in the appropriate fields to accomplish an FNOD during CEST processing. (See fig. 1.05.)

(4) To update the system, enter "UPD" in the NEXT SCREEN field of the last BIRLS screen requiring completion. The CLAIMS ESTABLISHMENT (102) screen will then be displayed.

```
VID          ESTABLISHMENT DATA              SEQ NO 88888888          09-01-89
FILE NO 987-65-4321  PN      BR        NAME ADJUDICATOR,URSULA,R
SSN 987654321      INS NO                 SVC NO 999999      STUB NAME I D ADJUD

FILE NO 987654321     PAYEE NO        NAME URSULA R ADJUDICATOR
ASSIGN FILE NO AS   CLAIM OR SSN.    CLAIM FOLDER LOCATION 460 WILMINGT
SOCIAL SECURITY NO 987654321         DATE OF DEATH
INSURANCE FILE NO                    CAUSE OF DEATH
INSURANCE POLICY NO                  DEATH IN SVC
DATE OF BIRTH                        POSITIVE INDICATION
SEX                                  POWER OF ATTORNEY
SERVICE NO(S)
EOD
RAD
BRANCH ON SVC
SEP REASON CODE
PAY GRADE
NON-PAY DAYS

CONTESTED DATA      DELETE RECORD          VADS      VERIFIED
                                                              NEXT SCREEN
```

Figure 1.04. BIRLS-VID Screen

```
VID          NOTICE OF DEATH DATA          SEQ NO 88888888          09-01-89
FILE NO 987-65-4321  PN 10  BR        NAME ADJUDICATOR,URSULA,R
SSN 987654321      INS NO                SVC NO 999999      STUB NAME I D ADJUD

FILE NO 987654321     PAYEE NO        NAME URSULA R ADJUDICATOR
ASSIGN FILE NO AS   CLAIM OR SSN     CLAIM FOLDER LOCATION 460 WILMINGT
SOCIAL SECURITY NO 987654321         DATE OF DEATH          06-01-1989
INSURANCE FILE NO                    CAUSE OF DEATH         UNKNOWN
INSURANCE POLICY NO                  DEATH IN SVC
DATE OF BIRTH          12-25-1962    POSITIVE INDICATION
SEX                    M             POWER OF ATTORNEY      000
SERVICE NO(S)           999999
EOD                   04-01-1981
RAD                   03-31-1984
BRANCH ON SVC              ARMY
SEP REASON CODE             HON
PAY GRADE                   SAT
NON-PAY DAYS

CONTESTED DATA      DELETE RECORD          VADS      VERIFIED
                                                          NEXT SCREEN
```

Figure 1.05. BIRLS-VID Screen in NOD Format

c. **Completion of the Claims Establishment (102) screen.** The CLAIMS ESTABLISHMENT screen reflects the file number, end product code, benefit type and veteran's stub name used in the BIRLS updating process. (See fig. 1.06.)

(1) Always complete the following fields to establish a claim: the NAME AND ADDRESS segment (the NAME line will be carried forward if the veteran is the claimant), the NAME LINE NUMBER, the DATE OF CLAIM, the POWER OF ATTORNEY (carried over if entered on the BIRLS-VID screen), the SECTION/UNIT NUMBER, and BENEFICIARY BIRTH DATE (for payees other than 00).

(2) Complete the remaining fields only if applicable to the claim.

(a) For claims involving payments to fiduciaries the FIDUCIARY FILE LOC field allows the entrance of the 3-digit station number where the guardianship folder is located.

(b) Complete the BENEFICIARY STUB NAME field for claims of payees other than a veteran if the correct stub name does not appear in the NAME field at the upper right corner of the screen.

(c) Complete the SUSPENSE DATE field only to specify a different suspense date (based on local or other specific directives) than the one the system will automatically generate based on the end product assigned. An appropriate suspense date 60 to 90 days from the current date is automatically generated by the system as shown below.

AUTOMATIC TARGET EPC SUSPENSE DATE

EPC	DATE	EPC	DATE
110	90 days	290	60 days
120	90 days	293	60 days
130	60 days	310	90 days
133	60 days	320	60 days
135	60 days	330	60 days
140	90 days	500	60 days
150	60 days	510	60 days
160	60 days	600	60 days
165	60 days	680	60 days
170	60 days	690	60 days
173	60 days	910	60 days
180	90 days	920	60 days

(d) Complete the FUTURE REASON field with the applicable 30-series diary control when no master record future diary control can be established. When this field is completed, the DATE OF CLAIM field must be blank. Use of this field establishes a future issue. The issue matures on the SUSP DATE and converts to a pending issue. The control codes and their descriptions follow:

Future Date Control Code	Description
31	NSC Tuberculosis diary for 6-month review - 38 C.F.R 3.342(b)(2).
32	Incompetent beneficiary estate limitation review - part I, paragraph 28.13.
33	Review of Service-Connected Unemployability grant - part I, paragraph 55.08.
34	Review of Open-ended Par. 29 Rating - part I, paragraphs 25.23c and 53.02g.
35	Hospital adjustments for NSC pensioners - part I, paragraph 25.10; 38 C.F.R 3.551 and 3.556.
39	Other

(e) The SUPPRESS ACKNOWLEDGEMENT LETTER field will display a "Y" for certain end product codes. Enter a "Y" in this field if not already displayed and suppression of the acknowledgement letter is desired.

(3) Press the ENTER key when the 102 screen is completed. If a new file number was established during CEST, or if CEST processing resulted in an NOD transaction to BIRLS, the VID screen will automatically print. Target then displays a Disposition screen for routing of the claim to the next processing stage.

```
102                          CLAIMS ESTABLISHMENT                    09-11-89
  FILE NUMBER  987 65 4321-00      END PRODUCT  110  CPL  NAME  I D ADJUD

            NAME          IVAN D ADJUDICATOR
            AND           810 VERMONT AVE
            ADDRESS       WASHINGTON DC   20420      NAME LINE NUMBER     1
                                                     COUNTRY CODE

                                                     STATE CODE

FIDUCIARY FILE LOC
BENEFICIARY STUB NAME
BENEFICIARY BIRTH DATE
DATE OF CLAIM              09-11-1989
POWER OF ATTORNEY          000
SUSPENSE DATE
SECTION/UNIT NUMBER         1111
FUTURE REASON

SUPPRESS ACKNOWLEDGEMENT LETTER

                                                              NEXT SCREEN
```

Figure 1.06. 102 Claim Establishment Screen

d. **Completion of the Disposition (S99) Screen.** This screen is used for automated tracking of a claim's progress. Once a claim is established in Target, its movement from one processing destination to another may be recorded in the system. Use of the system to record movement of a claim into and out of the rating board is required. Use of the screen to record movement to other locations is optional. This screen may also be used to change a suspense date (except in multiple DISP actions). The file number, payee number, benefit indicator and end product code are displayed in their corresponding fields on the S99 screen during CEST, PEST, CDAT, CDEV, CADJ and CAUT processing. (See fig. 1.07.)

• (1) Route the claim or issue by making an entry in ROUTG field. (The ROUTING FOR ALL ISSUES field may be accessed only by using the DISP command.) Acceptable routing entries are limited to those shown below:

DESTINATION	ABBREVIATION USED
Files	FILES
Development	DEVEL
Rating Board	RB (followed by 2-digit #)
Data Entry	ENTRY
Vocational Rehabilitation & Counseling	VRC
Adjudicator	ADJUD
Authorizer	AUTH
Unit Chief	UC
Section Chief	SC
Asst. Adjudication Officer	AAO
Adjudication Officer	AO
Finance	FIN
Veterans Services	VETSV
Director	DIR

District Counsel	DC
Power of Attorney	POA
Other area outside Adjudication Division	0 (+ 4-character routing symbol)

(2) Enter either "Y" or "N" in the FOLDER W/CLAIM field to indicate whether the claims folder is with the claim. If "N" is entered, a "Y" should be entered in the appropriate FOLDER REQUESTS field. If the claim will be worked without the folder, the FOLDER REQUESTS fields may be left blank.

```
S99                                    DISPOSITION                                    09-01-89
ROUTING FOR ALL ISSUES              SUSPENSE DATE  11-01-1989
                                      FOLDER                  FOLDER REQUESTS
FILE NUMBER PAYEE BENE EPC ROUTG      W/CLM   PREP    FR FILES   FR OTH VA    OTH DELAY
987 65 4321   00  CPL  110 DEVEL      N                  Y

                                                                        NEXT SCREEN
```

Figure 1.07. DISP Screen

e. **Completion of the Presidential Memorial Certificate Screen.** The Presidential Memorial Certificate (PMC) screen is displayed during CEST processing of an initial death claim. (See fig. 1.08.) To avoid issuing more than one PMC, complete the screen only if entering the date of death. If the date of death is already in the BIRLS record at the time a CEST is done, assume that the PMC was already sent. PMC eligibility is discussed in paragraph 5.24.

(1) The top part of the PMC screen displays the veteran's name, file number and other identifying data from the BIRLS record. It cannot be changed during CEST processing. If it is incorrect or incomplete, establish a diary as explained below. The necessary additions may be made during PMCS processing when the diary matures. Corrections to BIRLS may be made using the BUPD command, and the PMC record may then be established when the diary matures.

(2) If the information required to establish a certificate record is available, enter the title, name, address and relationship of the person who is to receive the PMC in the bottom portion of the screen. Accuracy is essential as it is the source used to prepare the certificate.

(3) If a PMC record cannot be established because of incomplete or inaccurate information, enter an "X" in the DIARY field. A 60-day diary is established to allow time to obtain needed information or make corrections. The system does not allow entries in both the PERSON TO BE ISSUED CERTIFICATE and DIARY fields.

PMC REQUEST FOR PRESIDENTIAL MEMORIAL CERTIFICATE 09-01-89

VETERANS NAME
FILE NUMBER
STATION JURIS
DATE OF DEATH
CHAR OF DISCH
SEP REASON DIARY

PERSON TO BE ISSUED CERTIFICATE

TITLE AND NAME
(MR,MRS,ETC)
ADDRESS

RECIPIENTS RELATIONSHIP
TO VETERAN

NEXT SCREEN

Figure 1.08. PMC Screen

1.06 PENDING ISSUE ESTABLISHMENT

a. If there is an active master record for the benefit claimed, a pending issue may be established using the PEST, CDAT or CADJ commands. The basic steps for establishing a pending issue using any of these commands are:

(1) Complete the Ready screen using the command (PEST, CDAT, or CADJ), the operator's password, and the full file key. Full file key entries are the file number, the payee number, the end product code, the benefit type, and the stub name. If the payee is NOT the veteran, enter the veteran's stub name and the payee's full name. (See fig. 1.09.)

(2) Complete the 103 Pending Issue Control Establishment screen. (See fig. 1.10.) The screen displays the payee's name and address and Power of Attorney code from the Master Record. The minimum required entries are DATE OF CLAIM and SECTION/UNIT NUMBER. If the power of attorney is other than the displayed organization, enter the corrected code in the POA field (000 or NONE if no POA - see pt. I, ch. 3, add. A for Target codes). This field must be completed when the screen is entered.

```
                                READY

COMMAND              PEST  XXXX

SCREEN NUMBER
FILE NUMBER          987654321
PAYEE NUMBER         00
END PRODUCT CODE     110
BENEFIT              C&P
STUB NAME            I D ADJUD
FULL NAME
  FIRST
  MIDDLE
  LAST
  SUFFIX
SOCIAL SECURITY NUMBER
SERVICE NUMBER                          BRANCH          EOD          RAD
DATE OF BIRTH                           DATE OF DEATH
REGIONAL OFFICE
INSURANCE NUMBER
REQUESTOR ID
```

Figure 1.09. PEST Ready Screen

```
103                 PENDING ISSUE CONTROL ESTABLISHMENT          09-11-89

  FILE NUMBER  987 65 4321-00       END PRODUCT  110  C&P  NAME  I D ADJUD
             NAME          IVAN D ADJUDICATOR
              AND          810 VERMONT AVE
               ADDRESS     WASHINGTON DC
                                        20420

FILE NUMBER
PAYEE NUMBER                            EMPLOYEE
FIDUCIARY FILE LOC                      RELATIVE
VET STUB NAME                           VIP
BENEFICIARY STUB NAME                   OTHER
END PRODUCT                             SECURITY
BENEFIT INDICATOR
DATE OF CLAIM          9-11-1989        POWER OF ATTORNEY 000
SUSPENSE DATE
FUTURE DATE REASON

SECTION/UNIT NUMBER      1111
CHANGE AND DISPOSE                                      NEXT SCREEN
```

Figure 1.10. 103 Pending Issue Control Screen

(3) If a claim or issue is established using the PEST or CDAT command and there is a change of address, enter "601" in the NEXT SCREEN field to access the CHANGE OF NAME, ADDRESS AND FIDUCIARY screen. Complete it with the new address and press ENTER to continue. If establishing a pending issue using the CADJ command, the 601 screen may be accessed from any screen used during processing.

(4) If a claim or issue is established under the PEST command, the DISPOSITION (S99) will be displayed as the final processing stage. (See par. 1.05d for instructions for completing this screen.)

b. Unless the desired screen number is entered on the Ready screen when using the CDAT or CADJ commands, either the 300 Data Entry Screen (if CDAT is used) or 400 Adjudication Selection Screen (if CADJ is used) is displayed after completing the 103 screen. Enter the appropriate screen number in the NEXT SCREEN field to continue. If an inappropriate screen is requested, the message SCREEN INAPPROPRIATE FOR ISSUE is displayed. See part I, chapters 23 and 24 for award/disallowance processing instructions.

SUBCHAPTER II. MAIL MANAGEMENT

1.07 MAIL MANAGEMENT

Efficient division mail management is crucial to the success and control of workflow within the division. The division's formal Mail Routing Guide for the station's centralized mail activity must succinctly state its mail flow needs. Automated control establishment procedures are incorporated in the WIPP User Plan. Screen and place incoming mail under Target control within 7 calendar days of receipt in the division. (See par. 1.03a and 5.11 if incoming mail is an original death claim.) Establish a Target control prior to referring any mail for claims folder association.

1.08 MAIL ROUTING GUIDE

The purpose of a Mail Routing Guide is to provide the Administrative activity with explicit instructions concerning the flow of mail into and out of the Adjudication Division. It defines the various mail categories of incoming and outgoing mail and specifies the points and times for the mail clerk's delivery and pick-up rounds. The guide should be reviewed at least annually and modified when necessary.

1.09 MAIL CLASSIFICATION

For management purposes, division mail is divided into three classes, incoming, in process, and outgoing. Each class has a number of categories. The classes and categories are described below.

a. **Incoming Mail.** Incoming mail is defined as mail delivered from the centralized mail activity which has not been placed under division control. There are essentially four distinct categories for incoming mail: priority, action, file and unidentified mail.

(1) Priority mail consists of items needing immediate attention. It is batched separately and delivered directly to the Unit Chief. It includes Congressional/Special Interest Inquiries, FNOD's, EVR's, VAI's, VA Forms 22-1999b, Notice of Change in Student Status (Under Chapter 30, 32, 34 or 35, Title 38 U.S.C. Chapter 106, Title 10, U.S.C. and Section 901 of Public Law 96-342) and VA Forms 22-1999b1, Notice of Change in Student Status. Station management may decide to include additional types of mail in this category, but these should be kept to a minimum.

(2) Action mail consists of all other forms and letters reflecting a claim or Social Security number. It is batched and delivered to a predetermined point in each unit or section.

(3) Unidentified mail is broken down alphabetically by last name and given to the person(s) responsible for Target identification attempts.

(4) Incoming file mail consists of computer-generated award or disallowance letters received from the Hines Data processing Center (DPC). It is the only mail that is referred directly to the file banks without a control.

b. **In Process Mail.** In process mail consists of all mail that is under Target control or otherwise being controlled as specified in paragraph 1.09c.

c. **Miscellaneous Mail Categories.** Some mail cannot be identified as either constituting an initial claim for which a folder must be built, or for association with an existing claims folder (at the receiving station or another field station). For management and control purposes, this mail is categorized as follows:

(1) **No Record Mail.** No record mail is defined as mail for which a BIRLS record exists showing location at the receiving station, but no claims folder is found and there is no charge card in the file banks. Annotate the top of the mail with the symbol "N/R", the current date and initials of the person designating it as No Record Mail. Maintain this mail in a locally designated storage point while efforts are made to locate the claims folder. Chapter 3 explains the procedures to follow if a folder cannot be found.

(2) **Pending Transfer In (PTI) Mail.**

(a) If the BIRLS record shows location at another station but jurisdiction belongs to the receiving station, the mail is classified as Pending Transfer In (PTI) mail.

(b) If the mail constitutes a request for genealogical or general information from a folder located in an FRC, request the folder using the procedures specified in paragraph 4.11. (See M23-1, pt. 1, par. 15.26.)

(3) **Pending Transfer Out (PTO) Mail.** If the BIRLS record shows location at another station and that station retains jurisdiction, the mail is considered Pending Transfer Out (PTO) mail.

(4) **Search Mail.** Search mail is defined as mail for which the related folder is charged out of the files bank. Since a control is already established on the claim or issue, give this mail directly to the person designated as "Searcher." Search mail procedures are explained in paragraph 3.07.

(5) **Military File Mail.** Correspondence of a general nature which addresses matters over which VA has administrative responsibility but does not refer to a claim for benefits and/or does not include a return address is filed in a Military File. Refer to paragraphs 3.26 and 3.27 for more information concerning this file.

d. **Outgoing Mail.** Outgoing mail includes all mail being released to other elements within or outside the field station. It consists of three categories: regular, intraoffice and interoffice. Batch it accordingly for pick-up at the close of each workday.

(1) Regular outgoing mail consists of letters and forms being sent to a person or entity outside VA.

(2) Intraoffice mail consists of all items to be delivered to files or other elements within the field station. Worksheets and other typing requests should be batched and clearly marked for proper routing if the function is accomplished outside the division. Items being sent to other elements must also clearly indicate the routing symbol.

(3) Interoffice mail going to VA medical facilities, other regional offices, RPC or Central Office must also be clearly marked to show the destination. RPC mail is sent daily with an OF 41, Routing and Transmittal Slip, signed by the Adjudication Officer or designee no lower than unit chief, certifying that the material was reviewed and properly belongs in the claims folder. Use separate OF 41's to distinguish between action and file mail. Arrange it in double-terminal-digit sequence (last 4 numbers), then batch each sequence range separately. Sequence ranges for RPC are: up to 9,999,999, 10,000,000 to 24,999,999, 25,000,000 to 27,999,999 and from 28,000,000 on.

CHAPTER 2. FOLDER ESTABLISHMENT

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CHAPTER 2. FOLDER ESTABLISHMENT

2.01 FILE NUMBER ASSIGNMENT

a. The records of all claimants and beneficiaries must be identified by a file number which, in most cases, will be the veteran's Social Security Number (SSN). Original applications from Philippine nationals or other former servicemembers who have never been assigned an SSN require the assignment of an eight-digit claim number by BIRLS. Request assignment of a file number during CEST processing by placing an "X" in front of either CLAIM or SSN in the ASSIGN FILE NUMBER AS field of the VID screen. (For detailed instruction on CEST processing, refer to ch. 1.)

b. Regional offices will assign a file number, if none currently exists, upon receipt of the following types of applications or records from living veterans.

(1) Applications for compensation or pension when the veteran's entire military service was subsequent to July 15, 1903, or Coast Guard service after January 27, 1915.

(2) Applications for education and vocational rehabilitation under 38 U.S.C. chapters 30, 31, 32 and 106.

(3) Certified copies of certificates of service issued to individuals on the Army, Navy or Air Force Medal of Honor Roll under 38 U.S.C. chapter 15, subchapter IV.

(4) Requests from designated officials in connection with applications under 38 U.S.C. chapter 41.

(5) VA Forms 29-4373, Request for Disability Compensation Rating for Insurance Purposes (Government Life Insurance).

(6) VA Forms 4-1426, Request for Assignment of File Number on Overpayment Cases.

(7) Requests for memorandum ratings received from military hospitals.

(8) Requests for memorandum ratings received from Loan Guaranty for determination of individual eligibility for loan guaranty benefits under 38 U.S.C. 1802.

(9) Inquiries from penal institutions for determination of potential eligibility for burial allowance under 38 U.S.C. chapter 23.

(10) Requests for eligibility determination received from Loan Guaranty for cases under section 203(b)(2) of the National Housing Act, as amended by Public Law 89-117. The requests for assignment of file numbers for these cases will be received on OF 41, Routing and Transmittal Slip, attached to a Statement of the Case.

(11) VA Forms 10-7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action, indicating the need for

adjudicative action or a decision on an other than honorable discharge.

(12) VA Forms 21-4502, Application for Automobile or Other Conveyance and Adaptive Equipment.

(13) Requests for memorandum ratings received from VA regional office and insurance centers (VAROIC) for determination of competency.

c. Forward the following types of applications to the Washington regional office (WRO) for file number assignment:

(1) Veterans having military service prior to July 16, 1903.

(2) Chapter 31 claims filed by persons claiming service in Allied Forces during World War II.

(3) Claimants residing outside the continental limits of the United States other than within the territory assigned to the regional offices in Alaska, Hawaii, Puerto Rico and the Philippines.

(a) Education applications for enrollment in a United States school will be forwarded to the office having school jurisdiction.

(b) Applications from claimants residing in Mexico will be forwarded to the Houston regional office.

d. See paragraph 5.11 concerning assignment of file numbers for death claims.

2.02 FILE NUMBER ESTABLISHMENT IN THE BIRLS SYSTEM

Establish a file number in the BIRLS system during CEST processing or by using the FNOD, BUPD, BFLD, BADD or DUPC command. Use of the BADD or DUPC command for this purpose should be limited to times when the CEST or FNOD command is not appropriate. The following types of folders may be established in the BIRLS system:

a. Claims Folders

(1) On the LOC screen place an "X" in front of the ESTABLISH A ____ FOLDER field and the entry "CLAIM" in the blank field in front of FOLDER. If an entry other than "SYS" appears in the NO FOLDER EST RSN field, delete it <u>at the same time</u> as the establish folder entries are completed; otherwise, problems with claims processing may occur. If "SYS" appears, no deletion is required.

(2) Enter "UPD" in the NEXT SCREEN field and press the ENTER key.

(3) The Target system generates an "ESTABLISHMENT DATA" print on a tear sheet. Save this generated print for filing in the folder being established.

b. NOD (Notice of Death) Folders

(1) On the LOC screen place an "X" in front of the ESTABLISH A _____ FOLDER field and the entry "NOD" in the blank field in front of FOLDER. If a NO FOLDER EST RSN appears, do not delete it.

(2) Enter "UPD" in the NEXT SCREEN field and press the ENTER key.

(3) The Target system generates an "ESTABLISHMENT DATA" print on a tear sheet. Save this generated print for filing in the folder being established.

c. **DEA (Dependents Educational Assistance) Folders**

(1) Use the CEST command to create a DEA file. The Ready Screen entries are CEST, password, file number, payee number, EP (end product) code, benefit type, veteran's stub name and beneficiary's full name. Enter "UPD" in the NEXT SCREEN field on the displayed VID screen.

(2) Complete the 102 screen. If no record is found, a message will be displayed to establish a beneficiary record. Enter "ADD" in the NEXT SCREEN field, press the ENTER key and the BID screen will be displayed.

(3) On the BID screen place an "X" in front of the ESTABLISH A DEA FOLDER field.

(4) Enter "UPD" in the NEXT SCREEN field and press the ENTER key.

d. **Chapter 30 Folders**

(1) Use the CEST command to establish a Chapter 30 folder.

(2) On the LOC screen place an "X" in front of the ESTABLISH A _____ FOLDER field and the entry "CH30" in the blank field in front of FOLDER.

(3) Enter "UPD" in the NEXT SCREEN field and press the ENTER kev.

NOTE: Chapter 30 folders are currently maintained only in the Atlanta, Buffalo, Muskogee and St. Louis regional offices.

e. **R&E Folder.** Use the BUPD or BFLD command to create an R&E folder. Complete the two ESTABLISH A FOLDER fields on the LOC screen with "X" and "R&E" and enter "UPD" in the NEXT SCREEN field. Press the ENTER key.

f. **JOBS (Job Training Folders) and REPS (Restored Entitlement Program for Survivors) Folders.** These types of folders are not tracked in BIRLS.

2.03 CREATING THE FOLDER

Select the specific type of folder shown below for the indicated categories:

a. **Claims Folder.** A red-rope, three-flap folder with fasteners attached on the inside (stock number NSN 7530-00-707-8406) is established when VA receives an initial claim for benefits from a veteran.

b. **NOD Folder.** A lightweight, two-flap manila folder with fasteners attached on the inside (stock number NSN-7530-00-757-4108) is created when a first notice of death (FNOD) results in a new file number assignment or an FNOD is processed and a claim number exists but there is no claims folder or the claims folder is located at RPC. (See par. 5.13 for more

information.)

c. **R&E (Rehabilitation and Education) Folder.** A kraft folder (stock number NSN 7530-00-680-2420) is created for each veteran who enters a Chapter 31 vocational rehabilitation program.

d. **DEA Folder.** A blue, two-flap folder with fasteners attached on the inside (stock number NSN-7530-00-680-2421) is created for each eligible person for whom a VA Form 22-5490, Application for Survivors and Dependents Educational Assistance, is filed.

NOTE: Do NOT establish a DEA folder until eligibility is established by an adjudicator.

e. **Job Training Folder.** A yellow, two-flap folder with fasteners attached on the inside (stock number NSN 7530-00-761-4110) is created when a veteran files an initial VA Form 22-8932, Application for a Certificate of Eligibility.

f. **Chapter 30 Folder.** A gray, two-flap folder with fasteners attached on the inside (stock number NSN 7530-00-761-4110G) is created when an original claim for Chapter 30 benefits is received at the Atlanta, Buffalo, Muskogee or St. Louis regional office.

2.04 LETTERING THE FOLDER

a. Print the veteran's name, or the claimant's name if creating a DEA folder, last, first and middle name or initial (if only initial is known), in letters at least 3/8-inch high on the upper left corner of the cut edge of the left flap of the folder.

b. Print the file number, including the proper prefix C, SS, XC or XSS, in digits at least 1/2-inch high on the upper right corner of the cut edge of the left flap of the folder. For a DEA folder include the correct letter suffix (W, A, B, etc.).

2.05 COLOR-CODING

a. Claims, R&E, Job Training, DEA, NOD and Chapter 30 folders must be color-coded based on the last two digits of the claim number. To color code a claims folder, place a single strip of 3/4-inch self-adhesive tape, 3 inches long, over the center fold of the claim folder (1 1/2-inch overlap on each side) 1 inch from the edge of the upper right corner; on R&E, DEA, Job Training, NOD and Chapter 30 folders, center the tape on the square-cut edge of the folder making sure that neither the name nor the file number is covered by the tape.

b. Color codes for the terminal digits are as follows:

00-09 red	50-59 medium blue
10-19 light blue	60-69 yellow
20-29 orange	70-79 black
30-39 light green	80-89 white
40-49 brown	90-99 medium green

2.06 ESTABLISHING A CHARGE CARD

a. Establish a VA Form 3025, File Charge Card, for each folder established. Print the veteran's name, or the claimant's name for a DEA folder, last name first at the upper left corner of the VA Form 3025.

b. Print the file number, including the prefix C, XC, SS or XSS as appropriate, at the upper right corner of the VA Form 3025. Also, for DEA folders include the correct letter suffix (W, A, B, etc.). In addition, annotate charge cards for R&E folders and Job Training folders "R&E FOLDER" or "JOB FOLDER," as appropriate, below the claim number.

c. Color code all charge cards except those for claims and Chapter 30 folders according to the classification of folder. Color code the charge card by centering a 3/4-inch strip of colored tape at the top of the VA Form 3025. The color codes for charge cards are as follows:

(1)	R&E folder	Orange
(2)	Job Training folder	Yellow
(3)	DEA folder (Spouse or Surviving Spouse)	Red
(4)	DEA folder (Child)	Light Blue

2.07 CROSS-REFERENCING AND STANDARD NOTATIONS ON FOLDERS

Notations stamped on claims folders are used to denote existence or disposition of a record allied to the basic claims folder. The current standard notations are:

a. "R&E FOLDER ESTABLISHED." Placed on the jacket of a claims folder concerning a veteran for whom an R&E folder has also been established. Upon establishment of an R&E folder, place the following rubber stamp impression in the lower left quarter of the front of the claims folder: "R&E FOLDER ESTABLISHED" (letters at least 3/8-inch high).

b. "R&E FOLDER RETIRED PL (346)(16)(550)(894)(815)
To: FEDR REC CTR (Location)
By: (Retiring office) (Date)"

"PL (Number) R&E FLDR RETIRED
To: FED REC CTR (Location)"

"TERM 346 R&E FLDR RETIRED
To: FEDR REC CTR (Location)
By: (Retiring office) (Date)"

"CHAPTER 31 R&E FOLDER RETIRED
To: FARC (City, state) (FARC Accession No.)
(FARC Shelf Location No.) (VA Box No.)
By: (Retiring office) (Date - Year only)"

These notations are placed on claims folder jackets to indicate retirement of corresponding R&E folders to Federal archives and records centers.

c. **"REBUILT FOLDER-NOTIFY RPC (232C) WHEN CONSOLIDATION WITH LOST FOLDER OCCURS."** Place this notation on the jacket of a folder established because the original record could not be located.

d. **"EMPLOYEE."** Affix VA Form 23-8949, VA Employee Folder Label, to the front of all veteran-employee folders which are maintained in locked files in the regional office. If the folder is maintained at a station other than that in which the veteran-employee works, affix VA Form 23-8949a, VA Employee Label, to the front of the folder. Under normal circumstances, do not maintain the latter class of folders in locked files.

e. **"(Name) RO**

OUTPATIENT TREATMENT RECORDS REVIEWED FOR DEATH COMPENSATION OR PENSION CLAIM DATE_____.
INITIALS_____"

This notation, stamped on the inside right cover of the XC-folder, indicates review by the Adjudication Division of the associated outpatient treatment folder for existence and removal of relevant adjudicatory material not appearing elsewhere. Adjudication personnel place this notation on the folder.

f. **"COUNSEL FLDR LOC (name of station)(year)."** Place this notation on the related claims folder before sending it to the inactive storage area.

g. **"INACTIVE XC-FOLDER EXISTS."** Stamp this notation on the newly created XC-folder at the time the inactive XC-folder is created. It indicates that the records created or received in the regional office before the veteran's death are in the inactive XC-folder. (See par. 3.22.)

h. **"POW" (Prisoner of War).** Affix VA Form 10-5558, POW Label, to the front cover of the veteran's claims and active R&E folders approximately 1 inch below and parallel to the veteran's name. Follow this procedure for each veteran identified by an indicator in BIRLS as a POW.

i. **"JOB TRAINING FOLDER EXISTS."** Stamp this notation on the front cover of any existing claims folder when a Job Training folder is prepared. The Job Training folder will be stamped "NO C FILE EXISTS" or "C FILE EXISTS," depending on whether or not one is in existence when the Job Training folder is created.

j. **"DUAL BENE."** If a beneficiary is receiving benefits from two or more deceased veterans, stamp the claims or NOD folder with the notation "DUAL BENE." followed by the file number(s) of the cross-referenced case(s). Pull the companion folder when a folder in which beneficiaries are receiving benefits from more than one veteran is requested.

2.08. FILING MATERIAL IN FOLDERS

a. Only essential material should be filed in a claims folder. Material of nonrecord value will not become part of official records. Remove and dispose of material contained in claims folders which is redundant or of nonrecord value under Records Control Schedule (RCS) VB-1, part I, item No. 13-052.200. Remove from claims folders the following material provided it has served its initial purpose and has no additional legal, administrative or historical value:

on the right flap in reverse filing order to ensure these forms appear above the training material at all times. If necessary, add an ACCO fastener to the right flap of an existing folder to accommodate this method of filing.

2.09 FILING FLASHES IN FOLDERS

a. File VA Form 22-6564, Claims Folder Flash - Vocational Rehabilitation Trainee, on the left flap of the claims folder in reverse filing order so that it can be folded back to remain on top of all subsequent material.

b. File VA Form 20-6879, Overpayment Flash, on the left flap of the claims or XC-folder in reverse filing order so that it can be folded back to remain on top of all subsequent material.

c. File VA Form 27-8886, Insurance Flash, on the left flap of the claims or XC-folder in reverse filing order so that it can be folded back to remain on top of all subsequent material. Once the original death pension claim has been adjudicated and the insurance payment has been included in income considerations or if there is no claim for more than 45 days after the date of death (provided the insurance is paid within the 45 days), there is no need to continue to reverse file the form.

d. File material in R&E, Jobs Training, DEA and Chapter 30 folders as follows:

(1) **Left flap.** All documents relating to allowances, disallowances, awards, payments and overpayments.

(2) **Right flap.** Applications, award letters and any other type of evidence.

CHAPTER 3. FILES AND FOLDER CONTROL

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CHAPTER 3. FILES AND FOLDER CONTROL

3.01 GENERAL

a. See chapter 2 for folder establishment.

b. See chapter 4 for jurisdiction and transfer of folders.

3.02 FILING OF FOLDERS

a. File folders only in cabinets designated for that purpose. UNDER NO CIRCUMSTANCES STORE VETERANS RECORDS IN DESKS OR OTHER UNAUTHORIZED PLACES. Do not remove veterans records from VA premises for any purpose unless authorized by station management.

b. Arrange claims, XC-, R&E, Job Training and DEA folders numerically within terminal digits (last two numbers).

(1) Use the last two numbers of the file number to establish the terminal-digit category in which the folder should be filed. The filing sequence then becomes a strict numeric system, reading numbers from left to right.

(2) Identify folders by claim numbers or by Social Security numbers (SSN). Interfile folders bearing SSN's with folders bearing claim numbers. Leading zeroes have no numerical value and will be disregarded. As a result, the bulk of the folders identified by SSN's will be filed at the end of each terminal digit, but folders bearing SSN's preceded by zeroes may still fall within existing claim number sequence. Whenever a claim number and an SSN are numerically identical, file the folder identified by the claim number ahead of the folder bearing the SSN.

(a) Interfile those R&E folders not maintained in Vocational Rehabilitation and Counseling (VR&C) with the claims and XC-folder file series. File these R&E folders immediately behind the correspondingly numbered claims folder.

(b) Interfile DEA and Job Training folders with the claims, XC- and R&E folder file series. File DEA and Job Training folders behind the correspondingly numbered claims folder or R&E folder, as appropriate. EXCEPTION: VA regional office Manila will maintain DEA folders as a separate file series.

c. Chapter 31 counseling folders are established and maintained by the Vocational Rehabilitation and Counseling (VR&C) Division.

3.03 MISFILED RECORDS

a. Maintain all folders (claims, XC-, R&E, Job Training, DEA) in strict numerical sequence in the order prescribed in paragraph 3.02 for each file series. A folder not in the proper sequence is considered "misfiled." Look for misfiled folders during sequence checks, reconciliations, retirements and other special projects, as well as during normal file servicing.

b. When a mistiled claims folder is found, determine if the folder has been reported lost and whether or not a rebuilt folder exists. Check the charge card in files. If the charge card indicates that circularization was requested, notify the RPC that the folder has been found, as prescribed in paragraph 3.13. If the charge card indicates a rebuilt folder is located at the station, consolidate the two folders and notify the RPC when consolidation is completed. If the charge card does not indicate a folder has been circularized or rebuilt, or if there is no charge card in file, do a BINQ transaction on Target to ascertain the folder location shown in BIRLS. If Target shows folder location at the same station, return the folder and charge card to the proper file series. If Target indicates the folder is located at another station, check with the other station to ascertain if another folder exists. If no other folder exists, do a BUPD transaction to show correct folder location. If another folder exists, take action to transfer and consolidate the folders and notify RPC when consolidation has been accomplished. When the RPC receives notification of folder consolidation, they will remove the rebuilt-folder indicator in BIRLS.

3.04 LOCKED FILES

a. Maintain "locked files" in the office of the Adjudication Officer to house all claimants' records of a restricted nature. File a VA Form 3025, File Charge Card, in proper sequence in the claims folder file series to show that a record was placed in locked files. The AO or AAO is the sole custodian and is responsible for the necessary recording, filing, safeguarding and release, upon proper request, of all material housed in the locked files. Records, documents or other data released therefrom will be delivered only to the chief of the division requiring their use, or to a properly designated alternate, or to the representative of the recognized service organization holding the proper power of attorney. The following are to kept in locked files:

(1) Reports from the FBI (See subpar. c below).

(2) All records of veterans who are employees of the immediate regional office or center if jurisdiction of records is assigned to the employing office. For the purpose of this subparagraph, "veterans who are employees" will include veterans who are employees of the Veterans Canteen Service and those salary-basis employees appointed under 38 U.S.C chapter 73 as well as work-study personnel. See chapter 4 for offices of jurisdiction for employee-veteran records.

(3) All records pertaining to veterans serving in field stations as representatives (accredited or otherwise) or employees of veterans organizations or as employees of cooperating public or private agencies engaged in the presentation of claims to VA.

(4) In addition to the records specified above, maintain records belonging to the following individuals in the locked files during their tenure of office or while they are candidates for election:

(a) Governors of states or commonwealths.

(b) Lieutenant Governors of states or commonwealths.

(c) Attorneys General of states or commonwealths.

(d) Members of US Congress.

(5) Any other records which the Director determines should have special storage because of the nature of their content or public interest in the veteran concerned.

b. Maintain all restricted material not normally housed in a claims or R&E folder in kraft envelopes in locked files. Properly identify the contents in writing on the front of the envelope. Prepare VA Form 70-3797, Cross-reference to Confidential Report, indicating the existence and location of the veteran's confidential records, including FBI reports, and file it on the inside left flap of the claims folder (compartment B of segregated claims folder) or other file involved. **IT WILL REMAIN ABOVE ALL OTHER MATERIAL AT ALL TIMES.** If the claims folder is temporarily transferred out before preparation of VA Form 70-3797, retain the form in the file series in the same manner as file mail.

c. The station Director determines the length of time restricted records may be charged out of locked files to an organizational element. The using element will take necessary protective measures during the period records are in its custody. Annotate the charge card in locked files to show the current location of veteran's restricted records.

d. Establish local procedures to ensure records identified as meeting the sensitive file criteria contained in M23-1, part V, chapter 6, are placed in locked files. For each action to enter or remove a record in the sensitive file, a corresponding action will be taken to enter or remove the claims folder in locked files. Conduct a semiannual audit of both sensitive file holdings and locked file holdings. Immediately resolve any discrepancies. Additionally, establish procedures for ascertaining if an employee or a relative of an employee is assigned a file number. Employees who are assigned file numbers after their employment are required to notify their supervisor who, in turn, notifies the Security Officer. Use similar notification procedures if an employee is reassigned to another station or terminates employment.

3.05 HANDLING OF VA RECORDS PERTAINING TO TREATMENT OF HUMAN IMMUNODEFICIENCY VIRUS (HIV) OR SYNDROME (AIDS), ALCOHOL ABUSE, DRUG ABUSE OR SICKLE CELL ANEMIA

a. Title 38 U.S.C 4132 provides for the confidentiality of VA records pertaining to human immunodeficiency virus (HIV) or syndrome (AIDS), alcohol abuse, drug abuse or sickle cell anemia. This includes information received, obtained or maintained by an employee or contractor of VA for the purpose of performing HIV-AIDS, VA drug abuse, alcoholism or sickle cell anemia program or activity functions regarding an identifiable patient. A program includes treatment, rehabilitation, education, training, evaluation and research information.

b. Veterans Health Service and Research Administration (VHS&RA) is responsible for identifying and permanently maintaining the original VA records pertaining to these conditions. Such records will be specifically identified as coming under the purview of 38 U.S.C 4132.

c. For purposes of processing benefit claims, copies of such records, prepared by VHS&RA will merely be **LOANED** to the Adjudication Division.

d. No copies of these records will be made by regional office personnel and, after adjudication or other proceedings have been completed, the records will be destroyed in accordance with RCS VB-1, part I, item No. 13-052.300. Appropriate disposition of these records will be accomplished using whatever method is available at the regional office; i.e., shredding, incineration.

e. These VA records can be kept in the file only if the claimant submits them. However, the veteran must be advised that such documentation is available upon request from the VA medical facility and need not be maintained in the claims folder unless the claimant so desires.

f. Reports of VA physical examinations for the purpose of evaluating a disability are not included under 38 U.S.C 4132 and, therefore, will be maintained in the claims folder.

g. Records pertaining to HIV-AIDS, alcohol abuse, drug abuse or sickle cell anemia which pertain to non-VA programs will also be maintained in the claims folder.

h. Generally, records specified in subparagraphs e and g above will not be redisclosed without the individual's consent.

3.06 CONTROL AND SEQUENCING OF RECORDS

a. Establish controls essential to assure locating folders charged out of files storage.

(1) VA Form 3025 is the only control maintained of records charged out of storage. Fill out the card to show the mail routing symbol of the organizational element to which the folder was charged, the type of mail (form number, etc.) which caused the folder to be pulled, date folder was charged out of file and the initials of the person who made the charge.

(2) Use VA Form 70-3770, Requisition for Numbered Folder, for requisitioning individual folders. As required, this form may also serve as a record of folders located within an operating element.

(3) Use VA Form 20-3770a, Notification of Recharge of Numbered Folder, for recharging individual folders from one organizational element to another. As required, this form may also serve as a record of folders located within an operating element.

(4) Process VA Forms 3025 in accordance with chapter 4 to establish control of folders being transferred in or out.

b. Proper and continual sequence checking improves control of veterans records. A file sequence check consists of checking each folder in a file drawer to ensure that every one is in strict numerical sequence within each terminal digit and that R&E (those not filed in VR&C), DFA and Job Training folders are properly interfiled with claims and XC-folders.

(1) Accomplish some sequence checking on a daily basis. Station management should establish a schedule so that ALL regional office file banks are checked AT LEAST once a year.

(2) During sequence checks, remove charge cards eligible for disposition, pull folders in need of renovation and shift folders to avoid overcrowded drawers.

(3) Maintain documentation of the sequence checks performed.

3.07 ACTIVE MAIL

a. Process all mail as it is received for attachment to related veterans records and delivery to an operational element. Using paperclips, attach special or priority correspondence to the front of the related folder with the least possible delay and deliver it immediately.

b. When processing mail across the files, if the related claims folder is charged out, annotate the VA Form 3025 in red showing the type of mail that is pending attachment. Note the latest chargeout information on the mail along with the file clerk's initials and the date. When the pending mail is attached, either in an operating element or after the folder is returned to files, close the flash by entering the appropriate organizational element, date of charge and the initials of the employee completing the charge.

c. File clerks designated as searchers are responsible for locating folders charged out of file within the regional office. Search activities are classified as "Expedite" or "Routine."

(1) Expedite searches include locating a folder on which priority mail or a priority request from a Division is pending. After location of the folder on an "expedite" search request, remove the folder and notify either the clerk or supervisor in the section of such action and the reason therefor. Handcarry the folder to the requester, and close the flash on the VA Form 3025 as specified above.

(2) Make routine searches for active mail not considered priority which has been annotated with the latest chargeout data from the VA Form 3025. Process routine search mail daily as follows:

(a) Place the mail in a manila folder, sorted into strict numerical sequence within terminal-digit order.

(b) Make a list, in terminal-digit order, of all file numbers pertaining to the material in the folder. Stations may wish to use either a PC program or the sort feature on the Wang system for preparing and maintaining this list.

(c) Check the areas in the unit for the folders on the list, then proceed to the other operating elements in the regional office.

(d) When a folder on the list is located, attach the material from the manila folder and return the folder to where it was found. The section in possession of the folder is responsible for forwarding it to the next operating element.

(e) Circle the number on the listing and annotate it with the mail routing symbol of the operating element in which the material was attached.

(f) After completion of the day's search activities, take the list to the files and close the flash on the VA Form 3025, as prescribed above, for each case in which the material was attached, and update the current location of the file on the charge card. **THIS IS ONE OF THE MOST IMPORTANT STEPS IN THE SEARCH PROCEDURE. UNLESS THE FLASH IS CLEARED ON THE CHARGE CARD, IT WILL BE IMPOSSIBLE TO KEEP TRACK OF THE CURRENT STATUS OF THE CLAIMS FOLDER.**

(g) Interfile all material remaining in the manila folder for which a folder was not found with the newly received routine search material. Prepare a new list of file numbers in strict numerical sequence.

d. Mark all mail for which no VA Form 3025 or claims folder can be located in the upper right corner with the initials of the file clerk and the date such mail was processed, as well as the annotation "No Record." Give this material to the individual in the unit or section responsible for processing "No Record" mail.

3.08 FILE MAIL

a. Material referred to the Files activity is accepted as file mail only when properly marked "DROP FILE." The name and mail routing symbol of the person authorizing the file action and the date of the authorization must appear on the correspondence.

b. Attached mail that is subsequently filed down in the folder by Authorization need not be marked "File" if it has resulted in a rating, authorization action or release of a letter referring to or indicating receipt of such mail. If, after review, it is filed down without action, it shall be annotated "NAN," initialed and dated by the employee filing it down.

c. When correspondence requiring a reply is filed, the file copy of the reply will bear the name or initials of the dictator and other persons, if any, who reviewed the reply before release. In such cases, "File" need not be noted on the incoming correspondence. Letters and all copies will be dated before release and the person signing either writes or stamps his or her name or initials on the file copy. All papers will be securely fastened in the folder before returning it to file.

d. Route all copies of computer-generated award or disallowance letters, VA Form 21-8332 series, received from Hines DPC (data processing center) for filing in claims folders to the Files activity without being date stamped or marked "For File."

e. Drop file material which has been accepted as file mail in the appropriate folder. Take extreme care to avoid mutilating papers or documents when drop filing. Material which has been drop filed will be filed down in the folder at the time of the next chargeout.

f. Folders will not be searched for attachment of file mail. File mail for folders out of file will be placed in a blank manila folder placed with the corresponding charge card in proper sequence in files storage. Mail will be drop filed when the folder is returned to storage. The manila folder will be retained for reuse.

g. File mail for folders located at RPC will be handled in accordance with paragraph 1.09d.

h. File mail for folders located at FRC's will be forwarded by Optional Form 41 (OF 41) to the appropriate FRC. File mail for each file number will have a separate OF 41 attached and will contain necessary information to identify and locate the folder, to include the veteran's name and file number, the date of retirement, the station from which retired, and the FRC name and identification number. See paragraph 1.09d(3) concerning review procedures.

The statement, "RECORD VALUE - FOR FILE PURPOSES," will also be included on the OF 41. If desired, stations may overprint OF 41. (See M23-1, pt. I, par. 15.20.)

3.09 DELIVERY OF FOLDERS ON REQUISITION

Deliver folders to operating elements upon receipt of active mail, termination of suspense periods or upon receipt of a properly executed requisition. Requisitions by listings are acceptable upon mutual agreement between the AO and the chief of the division submitting the request.

3.10 DELIVERY OF FOLDERS TO SERVICE ORGANIZATIONS

Honor requisitions for delivery of veterans records to a veterans service organization (VSO) only if the folder contains a current power of attorney designating the requisitioning organization to act for the claimant. Folders will not be delivered to organizations holding a limited power of attorney but will be delivered to the VSO with a specific request that contact be made with the representative of the requisitioning service organization.

3.11 DELIVERY OF FOLDER OR SUBSIDIARY RECORDS - VETERAN WAITING

a. Deliver folders within 15 minutes when requested by employees of Veterans Services Division (VSD) or representatives of service organizations to process "veteran waiting" cases. If the request is from a service organization, the folder must contain a current power of attorney for that service organization, or the service organization representative must state he or she is holding a current power of attorney. This must be verified at the time the folder is delivered.

b. If a folder is charged out of file, advise the requester as to the operating element having possession of the folder and ask if a search is desired. Make a special search if requested, and deliver the folder as soon as possible.

3.12 RECHARGE OF FOLDERS

The need for prompt location of veterans records requires enforcement of a good folder recharge system. Folders crossing division lines must be recharged by operating elements. Requirements for recharge of records crossing lines within a division will be established locally as determined by the size of the element serviced and by the normal traffic pattern of a folder within the section.

3.13 LOST FOLDERS

a. If a claims, XC-, R&E or DEA folder cannot be located, make an exhaustive search of the entire office. Do a name search of the entire drawer in which the folder should be filed, and add the file number to the search list. Check the Transfer and Correspondence activities pending files, the principal guardianship files, and the microfilm of checks issued the previous month if the BIRLS reply message shows an active compensation, pension or education record. If the results of the search are negative, consider the folder lost. Report the loss to the Director, Records Processing Center who will circularize the other field stations to locate the folder and advise the concerned station of the results. In no instance will a field station cause a search to be made in other field stations.

NOTE: If the office actually having the folder cannot be determined, the station in possession of the material for which the folder is required will report the folder missing.

b. Every request for circularization, including one for "Location Only," results in a rebuilt folder if the original folder is not located. Consequently, if the claims folder is not required to process the pending material, do not request circularization unless that material is of permanent record value.

c. If an R&E or DEA folder cannot be located after complete circularization, the station concerned will be so notified and will rebuild the R&E or DEA folder from available claims, fiscal and vocational rehabilitation and education records.

d. If a lost folder is found, combine the rebuilt folder and the original folder and forward it to the controlling operational element for review. Notify RPC that the original folder was found.

3.14 REQUESTS FOR CIRCULARIZATION OF MISSING CLAIMS AND XC-FOLDERS - REGIONAL OFFICES

a. Each station's glossary library contains a Circularization Request Format consisting of four documents.

(1) **Request for Missing Folder.** Use this glossary document for routine circularization requests to RPC.

(2) **24-Hour Search Request.** This glossary document contains fields for the veteran's name, file number, reason for search and action desired. Use it for emergent search requests only.

(3) **Response to Circularization Request.** Use this glossary document for responding to circularization lists. It provides for a standardized response format from each station.

(4) **Response to 24-Hour Search Request.** This glossary document provides a standardized format for use in responding to 24-hour search requests. Negative responses are not desired.

b. Wang E-mail.

(1) If a claims or XC-folder cannot be located after thoroughly searching the entire office, attach the circularization glossary and access the glossary document listed in subparagraph a(1) above. Enter as much identifying information as is available and any other pertinent information which may be helpful in the search for the folder. Transmit the document via Wang E-mail to the VA RPC mailbox identified as MAIL VBA RPC/CIR.

(2) The VA RPC will create a listing of missing folders and transmit the list to the mailbox previously provided by each field station to the VA RPC Administrator.

(3) Once it has been received at the field stations, print the listing and distribute it to all required operating elements. Follow normal search procedures. Field stations will access the glossary document listed in subparagraph a(3) above for response to the circularization list for those

folders found. Reply by E-mail within 5 workdays to the VA RPC mailbox identified above (MAIL VBA RPC/CIR). This mailbox is reserved for circularization requests and responses only. Do not use it for any other E-mail. The printout of the listing may be destroyed after E-mail transmittal to the VA RPC under RCS VB-1, part I, item No. 13-052.200.

(4) Follow these same procedures for emergent case requests, but access the glossary document shown in subparagraph a(2) above for initiating the request. The circularization will be E-mailed within 24 hours of the request and will be titled "24-Hour Search Request." Create responses to emergent requests by accessing the document shown in subparagraph a(4) above. E-mail both requests and responses to the VA RPC mailbox (MAIL VBA RPC/CIR).

3.15 FILE NUMBER ADJUSTMENT AND CANCELLATION

a. Forward all claims folders and applications involved in duplication of file numbers within a regional office (except Finance activity records) to the Correspondence activity for adjustment action.

b. Use the DUPC command to adjust BIRLS records for a veteran if it is discovered that two BIRLS records for that veteran exist, each identified by a file number (C or SSN).

c. Both folders are required to process the adjustment of duplicate records. If both claims folders are not in the possession of the regional office discovering the duplicate records, that office will request the other folder on a permanent transfer.

NOTE: If both folders involved in duplication of file number assignment are located in the RPC, RPC will accomplish adjustment action.

d. Take the following actions when adjusting duplicate file numbers:

(1) Retain the file number under which an award has already been approved.

(2) If both claims are for monetary benefits and carry active awards, retain the file number pertaining to compensation or pension. If both records contain compensation or pension awards and one of the files is identified by a social security number and the other by a claim number, retain the claim file number. If both are identified by claim file numbers, retain the lower claim file number.

(3) If both claims are for monetary benefits and neither contains an award, retain the file number under which the more important evidence has been developed.

(4) If both claims are for hospitalization, retain the first number assigned. (NOTE: Applications for outpatient and domiciliary care are considered hospital applications.)

(5) In all instances, cancel a file number previously assigned on the basis of a disability insurance claim.

(6) If both records pertain solely to education and only one record indicates entitlement used, retain the record in which entitlement was used.

(7) If both records pertain solely to education and both records have

active awards or both have terminated awards, retain the record with a claim file number versus a Social Security number. If both records have claim file numbers assigned, retain the lower claim file number.

(8) If both records pertain solely to education and one record has an active award and the other a terminated award, retain the file number with the active award.

(9) If one of the education records being adjusted has been transferred in from the RPC, perform a MINQ transaction to determine whether an active Hines master record exists. Display of an abbreviated education master record (M25) screen indicates the record is inactive and needs to be referred to the Authorization activity for action prior to DUPC processing. Display of any other education master record (M21, M22, M23, M24) screen indicates the record is active, and a DUPC transaction can be processed.

(e) After making any necessary determination, process a DUPC transaction.

3.16 DUPLICATE RECORDS CONSOLIDATION (DUPC)

a. Enter DUPC and the operator's password on the Ready screen. After depressing the ENTER key, the Record Consolidation (CON) screen will be displayed for entry of the file number and name of both records being consolidated. If the data (number and name) entered on the CON screen for the retained record does not match the BIRLS record being retained, the consolidation will NOT process. If more than one record is found, the NUM screen will be displayed. Review and select the record to be maintained. If a no-record is found for either file number, the transaction will terminate.

b. During DUPC processing, Target will display the retained record, the canceled record and the consolidated record after each depression of the ENTER key. Make prints of the first two VID screens being consolidated to compare data fields of the two records with the consolidated BIRLS record. No data correction is allowed on the first two screens. After the ENTER key is depressed for the third time, consolidation occurs and the consolidated VID screen is displayed for review. After consolidation, data fields may be updated on any screen in the retained record except INS by entering the individual screen name in the NEXT SCREEN field. Only stations 101, 376, 310 and 335 can update the INS screen. Enter UPD in NEXT SCREEN to complete the transaction.

c. During consolidation, data contained in identical fields of both records are combined in the retained record. Higher priority data have precedence over lower priority data, e.g., complete dates will replace incomplete dates. REBUILT, 376 and DES indicators (in order of priority) have priority over the NO FOLDER EST RSN codes. Review the consolidated BIRLS record to verify the retained data.

d. Each data field has a limited capacity. If more data exist in the two records than can be retained in the consolidated BIRLS record, data are lost (not retained in the system). For example, if there are more than three service periods, only three periods are retained.

e. MSC screen flash-code data in the two combined records are considered equal if the FLASH-TYPES are the same. If flash data cannot be stored and are lost, the message CON-DEL will appear in the TYPE ACCESS field on the Flash Message print screen. See paragraph 6.08.

f. Beneficiary records of the canceled and retained veteran BIRLS records are considered duplicates if the payee number and name match. Duplicate beneficiaries are not consolidated; only the beneficiaries in the retained record are kept. If the DEA folder CURRENT LOCATION is different from the veteran folder CURRENT LOCATION, a message is sent to the DEA station of jurisdiction informing it of the consolidation. Manually consolidate duplicate DEA folders and, if necessary, charge entitlement. (See M22-2, pt. V, ch. 11, subch. III.)

g. DUPC processing does NOT consolidate Hines master records. If there are two Hines master records, the data in the retained master record will remain after a successful DUPC transaction. Data in the canceled master record will be lost. Therefore, it is necessary to reestablish any accounts receivable from the canceled number under the retained number and to adjust manually the retained number for any educational entitlement used under the canceled number. If a DUPC transaction involves two BIRLS records but only one Hines master record, the data from that master record will appear under the retained file number.

3.17 RECORDS ADJUSTMENT ACTIONS - DUPLICATE CLAIMS

a. After taking the adjustment action in BIRLS, ensure that associated records adjustment actions are taken.

b. Review the folder identified by the canceled file number. Line out the file number on each piece of paper and mark each piece "Canceled Duplicate." Write the retained file number above the lined out number.

c. Combine the documents from the two folders in chronological order. File the material on the proper flap of the folder identified by the retained file number.

d. Annotate the canceled file number on the outside of the retained folder immediately below the retained file number. Draw a single line through the canceled number and write the notation "Canceled Duplicate" next to it. Duplicate all other markings on the jacket identified by the canceled number on the jacket identified by the retained file number. After the markings are transferred, dispose of the old jacket under RCS VB-1, part I, item No. 13-052.200.

e. If any action is required, refer material showing the canceled file number and the retained file number to the appropriate operating activity with an Optional Form 41, Routing and Transmittal Slip, showing the actions taken in the process of adjustment.

f. Mark the VA Form 3025 for the canceled number "Canceled" and enter the retained file number on the charge card as a reference. File the charge card in proper sequence in folder files under the canceled file number and dispose of it 1 year after the date of consolidation as required by RCS VB-1, part I, item No. 03-075.100. Annotate the file charge card at the top to show the month it becomes eligible for disposal.

g. After the records have been consolidated under the retained file number, complete a VA Form 23-39a, Your VA File Number, and mail it to the claimant.

b. Notify the veteran's representative and any VA medical facility with which there has been recent correspondence that the file number has been changed. Make this notification by sending an Optional Form 41 to those activities providing the veteran's name, retained file number, canceled file number and date of consolidation.. If the veteran's representative is not a service organization, use a dictated letter for notification.

3.18 DAMAGED OR DESTROYED VETERANS RECORDS

a. If records are seriously damaged or destroyed by fire or other disaster, either in the regional office or while in transit in U.S. mails, obtain complete information and forward it by the fastest available means to the Chief Benefits Director (231).

b. If facilities are available, the regional offices will renovate the damaged folders. If photocopies are required and reproduction facilities are not available, forward the folders to the Chief Benefits Director (231) for renovation.

c. If a folder containing records salvaged from a damaged folder or records collected on a case assumed to have been completely destroyed is received in the regional office of jurisdiction, extract or photocopy all existing available records, active or inactive, and place them in the folder. Request the veteran or beneficiary to forward any correspondence he or she may have received from VA so that it may be extracted or photocopied and placed in the folder.

3.19 TRANSFER OF DAMAGED RECORDS

Do not handle damaged records any more than absolutely necessary. If damaged records must be transferred to Central Office, compactly wrap each folder individually. Stamp the package "HANDLE WITH CARE" and address it to the Chief Benefits Director (231). Place the legend "DO NOT OPEN IN MAILROOM - DAMAGED RECORDS" above the address.

3.20 FILING MATERIAL IN SEGREGATED FOLDERS

a. Segregated folders are no longer being created for new claims, but those already in existence will be used and maintained. When such folders are in need of renovation or rejacketing, repair the existing folder or transfer the contents to another folder, continuing the segregated format. Do not convert such folders to the standard format.

b. Segregated folders have four compartments. File documents in each compartment as follows:

(1) **Compartment A.** Authorization forms, controls and other specified material of the types indicated for filing on the left flap of standard claims folders.

(2) **Compartment B.** Documents constituting the basis for adjudicative determinations other than ratings.

(a) Formal or informal claims or applications, including claims for increase or apportionment.

(b) Requests for and records received from service department or foreign

governments concerning service data, medical and dental examinations.

(c) Evidence relating to marital status, dependency, relationship, birth, age, income or value of estate.

(d) Requests for determination of basic eligibility of veterans for benefits.

(e) All legal decisions affecting the case.

(3) **Compartment C.** Evidence and documents on medical treatment and rating phases of the claim.

(a) Requests for and reports of examinations, hospitalization, observation and treatment by VA and private physicians.

(b) Reports of investigations or social surveys and affidavits of persons other than physicians on the physical or mental condition of a claimant.

(c) Decisions of rating boards and appellate bodies, including reports of personal hearings related to ratings.

(4) **Compartment D.** File copies of all communications, records and documents not for filing in one of the other compartments.

3.21 ESTABLISHMENT OF AN XC-FOLDER

If a claims folder exists at the time of the veteran's death, convert it to an XC-folder unless the claims folder is at the RPC. (See chs. 2 and 5.) Before combining XC-folder material, remove all duplicate and unnecessary material from the claims folder. File the Notice of Death Data print above the record of the last action taken on the claims folder. In segregated folders, file this print and related material in compartment B. In new XC-folders, file the print and related material on the right flap.

3.22 ESTABLISHMENT OF INACTIVE XC-FOLDERS

Establish inactive XC-folders on an optional basis if it is determined that a critical shortage of local files space or filing equipment exists. Where inactive XC-folders are established, separate them as indicated below. Place the records in an inactive storage area until they are retired under RCS VB-1, part I, item No. 03-140.000 and chapter 15 of M23-1, part I.

a. If the size of the claims folder existing at the time of the veteran's death indicates that it is potentially eligible for future establishment of an inactive XC-folder (at least 1/2 inch or more in thickness), place a suitable separator of lightweight material of distinctive color on top of all other material to facilitate later separation, if necessary. Place all material received and created after the veteran's death on top of the separator.

b. When all pending claims for death benefits and insurance have been completely processed and result in one or more awards of recurring payments, the XC-folders which contain at least 1/2 inch or more of material received in the regional office before the veteran's death will be eligible for separation.

c. If the XC-folder is eligible for separation, prepare a new XC-folder (red rope). File all material received or created by the regional office

after the veteran's death on the proper flaps. Remove the last COMPLETE VA Form 21-6796, Rating Decision, which was prepared while the veteran was alive and a copy of the veteran's discharge papers from the old XC-folder and file them in the center section of the new XC-folder. All other material will remain in the old XC-folder. Stamp the old XC-folder in 1/2-inch letters, "INACTIVE XC-FOLDER." Place a date stamp showing the date the inactive folder was created so it is readily seen for subsequent retirement purposes.

d. Stamp the newly created XC-folder in 1/2-inch letters, "INACTIVE XC-FOLDER EXISTS."

3.23 SECURING ADJUSTED COMPENSATION FILES

The unsettled adjusted compensation (A) file will not be combined with an XC-folder in the Washington regional office but will be secured and forwarded with the XC-folder to the Authorization activity. After the Authorization activity effects the settlement, dispose of the A-file under MP-4, part X, item 6-5.

3.24 RENOVATION OF FOLDERS

a. Maintain veterans folders to provide maximum protection of their contents. Avoid overcrowding in file cabinets. Replace folder jackets and envelopes damaged through excess use.

b. Renovate folders as needed to protect the contents. Perform any required renovation for folders being transferred before transfer.

c. Renovation of segregated folders includes the screening of compartments A and D to remove from compartment A noncurrent change of address notices, superseded stop or suspend pay notices and worksheets, and from compartment D material dated 1 year or older. Check material contained in all compartments for filing sequence.

d. Review nonsegregated folders to ensure that all documents relating to payments, allowances and disallowances are filed on the left flap of the folder. File documents in chronological order. Take care to ensure that replies to incoming correspondence are filed immediately above the incoming correspondence.

(1) Remove duplicate copies of documents in the folder unless they contain notations of record value.

(2) Remove worksheets, control or suspense copies of VA forms, form letters, diary slips, routing slips and letters of transmittal which have served their purpose and have no record value.

e. Dispose of material removed from renovated files under RCS VB-1, part I, item No. 13-052.000.

f. Duplicate markings shown on the old jacket of a renovated folder on the new jacket, with the exception of those now considered obsolete.

3.25 NONCURRENT STANDARD NOTATIONS ON CLAIMS AND XC-FOLDER JACKETS

Standard notations previously used in denoting existence or disposition of allied records or actions are no longer required and will not be perpetuated

by appearing on new jackets prepared for folders showing these notations. If the noncurrent notation has been superseded, the current notation will be used. (See par. 2.07 for a list of current notations.) There are a great number of obsolete notations, a partial list of which follows.

a. **"POWER OF ATTORNEY (date)."** This notation indicates a discontinued procedure whereby receipt of a current power of attorney was reflected on the jacket(s) of the veteran's records. The existence of status of powers of attorney cannot presently be determined without a review of the folder content.

b. **"RETIRED FILE IN VARSC" and "CURRENT FILE."** These notations denote a discontinued procedure. "Retired Files" consisting of correspondence removed from claims folders were retired to the VA Records Service Center which is no longer in existence. All such records have been disposed of in accordance with appropriate records disposition authority. Current procedure does not provide for creation of "Retired Files."

c. **"R&E FLDR TRFR TO VA REC (SERV) CENTR (date trfr)."** Obliterate this stamp when noted during routine operations. Folders transferred to VA Records Service Center have been destroyed.

d. **"R&E FLDR LOC (name of station)."** This notation was placed immediately contiguous to the "R&E FLDR" stamp when R&E or OE folders were at another station by reason of VR&C workload considerations.

e. **Others.** "DECEASED CASE;" "PAY RECORDS LOCATED _____;" "RATED 1945S;" "REVIEWED UNDER PUBLIC LAW NO. 2, 73RD CONGRESS;" "REVIEWED LETTER D A 12-14-54;" "REVIEWED UNDER INSTRUCTION #3 SECTION 27 AND 28 PUBLIC LAW 144, 73RD CONGRESS;" and "7-195 FILED IN R&E FOLDER ON _____."

3.26 MILITARY FILE

a. Adjudication will maintain a file, called the military file, comprised of the following:

(1) Correspondence of a general nature relating to matters for which VA has administrative responsibility which may be of value as supporting record material if a claim or application for benefits is filed at some future date and which cannot be returned to the originator because of no return address or a faulty address.

(2) Applications for benefits and related correspondence pertaining to persons who cannot be identified by service departments as having had military service and which cannot be returned to the originator because of no return address or faulty address.

b. Material in the military file will be maintained in alphabetical order by calendar year. At the end of the calendar year, close the file and dispose of it under RCS VB-1, part I, item No. 03-132.200.

c. Annotate "no record" material processed across the military file with results of the search.

3.27 TEMPORARY MILITARY FILE

a. Adjudication will maintain a temporary military file containing copies of the following types of material:

(1) Followups and acknowledgments of followups on mail pertaining to transfer of veterans records.

(2) Mail pertaining to veterans, their beneficiaries and dependents on matters not administered by VA.

(3) Any other material without identifying file number which is NOT OF VALUE to an existing application or possible future application for VA benefits or as policy or precedent-establishing material and which cannot be returned to the originator because of no return address or a faulty address.

(4) Material designated by any other directive to be filed in the temporary military file.

b. Maintain the temporary military file in alphabetical order on a quarterly basis. At the end of each quarter, close the file and dispose of it under RCS VB-1, part I, item No. 03-055.000.

3.28 AUTHORIZATION PENDING FILES

In the past, several pending files were maintained at the regional office. There was a Data Terminal File maintained by the Data Terminal Activity which contained material on claimants or correspondents which could not be identified with a particular claim for benefits, for which a file number could not be established or for which a folder could not be immediately established. There was a Correspondence Activity File which contained material with a VA file number pertaining to claimants for whom there was no-record mail on file in the regional office, all material awaiting developmental action by another VA office, and copies of documents in suspense for followup action such as VA Form 21-3101, Request For Information, VA Form 20-8738, BIRLS Record Adjustment Worksneet, and VA Form 21-7672, Notice of Death Worksheet. There was also a Transfer Activity File containing all actions pending on the transfer of claimants records. As a result of consolidation of functions, most regional offices now maintain only one pending file that encompasses all of these areas.

a. The pending file consists of two segments - alphabetic and numeric.

(1) The alphabetic segment includes material originated by Adjudication to which a reply is expected which will require further action and all actions pending on the transfer in or out of claims folders. Either annotate the material in the alphabetic file with the date of the request and the data requested or attach a copy of the outgoing correspondence to the material.

(2) The numeric segment consists of a second copy of the correspondence from the alphabetic segment, filed according to the suspense date.

b. If the volume is so slight that it requires only a few minutes to review the entire pending file, boldly annotate the alphabetic copy to show the suspense date. This eliminates the need for maintaining the numeric segment of the file.

c. Review the pending file DAILY during the first workhour of the day. Take followup action on all current-date suspense items.

d. Annotate the advancement of suspense dates, either by reason of

dispatch of followup correspondence or administrative determination, in the numeric segment of the file. If there is no numeric segment (see subpar. b above), annotate the alphabetic copy to show the updated suspense date.

e. Clear both segments of the pending file upon receipt of the requested correspondence or folder.

3.29 FOLDERS ELIGIBLE FOR COURT OF VETERANS APPEALS REVIEW

Special handling procedures are required for claims folders containing decisions by the Board of Veterans Appeals (BVA) which meet the criteria for review by the United States Court of Veterans Appeals (CVA).

a. **General.** The Veterans Judicial Review Act, Public Law 100-687, enacted into law on November 18, 1988, created CVA and granted it exclusive jurisdiction to review BVA decisions. Only those BVA decisions resulting from Notices of Disagreement (NOD) filed on or after November 18, 1988, are subject to review by CVA. Appeals must be filed directly with the court within 120 days of an adverse BVA decision or by November 14, 1989, whichever date is later. Until the appeal period has expired, a claims folder will require special handling to preserve the record on which the BVA decision was based and to ensure that the claims folder will be available for immediate transfer to BVA or General Counsel (GC) if an appeal is filed.

b. **BVA Responsibilities.** BVA is responsible for determining which of its decisions meet the criteria for review by CVA. BVA personnel will attach an easily recognizable label to the outside of each claims folder containing such a decision and will identify the record to be preserved by placing file inserts over the material contained in the file. These forms will be maintained by BVA for their exclusive use and will not be stocked in the regional offices. BVA will annotate the center file insert with the date (150 days from the date of the BVA decision) on which special handling will no longer be required and return the claims folders to the regional office of jurisdiction.

c. **Adjudication Officer Responsibilities.** During the period when special handling is required, the Adjudication Officer (AO) is responsible for controlling these claims folders and protecting the integrity of the records subject to review by CVA. When one of these folders is transferred, the AO must certify that while the folder was maintained under his or her control no material was added to or deleted from the record which was the basis for the BVA decision. The AO must also ensure that each of these claims folders will be available for immediate transfer to BVA or GC upon request if an appeal is filed with CVA. AO's are also responsible for designing and implementing local procedures to keep these claims folders in a secure area separate from regular files storage; ensure that any claims folder removed from the secured area is returned by the close of business each day; guarantee that the claims folder will be available for immediate transfer; and return the claims folder to regular storage on the date indicated by BVA on the file insert.

NOTE: A charge card indicating that the claims folder is being maintained in the BVA secured area will be placed in the proper sequence in regular files storage. (See par. 4.19 concerning permanent and temporary transfers of these claims folders.)

d. **Temporary Files.** Since NO material may be added to or deleted from the record contained in the claims folder, a temporary file will be

established for each claims folder if there is file mail or any other accumulated material which would normally be stored in the claims folder. A temporary file created while the claims folder was at BVA will be retained for this purpose. The temporary file will be annotated "BVA Decision _(date)_" and may be stored in either the secured area with the claims folder or in the regular files, at the discretion of the AO. It will not be subject to the same stringent restrictions as the claims folder and should have its own charge card.

NOTE: Whenever possible the temporary file should be used without the claims folder to process issues which may arise. The temporary file will remain in the regional office if an appeal is filed with CVA. It may be beneficial in many instances to include in the temporary file copies of important documents such as the last rating of record.

e. **Folder Reviews.** Any review of the claims folder will require documentation of the date and time of the folder review, identification of the record reviewed, purpose of the review, identification of the reviewer and certification that nothing has been added to or deleted from the material identified by BVA as subject to review by CVA. Space for the required certifications has been provided on the file inserts which BVA places over the center flap of the claims folder. Anyone reviewing the claims folder must take care not to change the order in which the material is filed.

(1) **VA Personnel.** Claims folder reviews by VA personnel should be limited to the smallest number of employees possible. On each occasion the AO or his or her designee must certify that no material was added to or deleted from the record which is subject to review by CVA.

(2) **Non-VA Personnel.** Any claims folder review by non-VA personnel, including claimants, service officers, attorneys or anyone else, must be conducted in the presence of a VA employee. The VA employee will be required to certify over his or her signature that during the review no material was added to or deleted from the record which is subject to review by CVA. VA personnel present during a claims folder review need not be from the adjudication division, and stations are encouraged to involve employees from other divisions such as VSD in these assignments. Employees are present to protect the integrity of the record subject to review by CVA and should not comment on or offer explanations of material contained in the claims folder.

f. **Expiration of Appeal Period.** When the local control matures 150 days after the date of the BVA decision, the claims folder may be removed from the BVA secured area and transferred to normal storage. The outside label and the file inserts must be removed at that time and the material in the temporary file transferred to the permanent claims folder.

g. **BVA Decision Appealed.** When notified that an appeal has been filed with CVA, the regional office should cancel its pending local control but retain the claims folder in the BVA secured area until it is specifically requested by BVA or GC. The claims folder will be unavailable to the regional office for an extended period, so the temporary file should be reviewed to ensure it contains copies of any material which might be needed for claims processing during the intervening period. When the claims folder is forwarded to CVA or GC, the temporary file will be maintained in normal storage.

CHAPTER 4. JURISDICTION AND TRANSFER

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CHAPTER 4. JURISDICTION AND TRANSFER

SUBCHAPTER 1. JURISDICTION

4.01 JURISDICTION OVER C-FOLDERS

a. **General.** The claims folder of a living veteran is under the jurisdiction of the regional office assigned the geographical area where the veteran maintains a permanent address. This remains true even though the file is in storage at the Records Processing Center (RPC) or a Federal Records Center (FRC). Exceptions are as follows:

(1) **Washington DC Regional Office (WRO).** Files under the exclusive jurisdiction of the Washington regional office. (See subpar. c below.)

(2) **Employee-Veterans.**

(3) **Mexican Cases.** Mexico is included in the area under the jurisdiction of the Houston regional office.

(4) **Polish and Czechoslovakian Veterans.** If Polish or Czechoslovakian veterans apply for health care under 38 U S C 109 and claim service connection, the Wilmington regional office has sole responsibility for rating action. **A claims folder and number will not be assigned to these claims.**

(a) If only a VA Form 10-7131 is received at the local regional office, return it to the requesting medical facility. Instruct the medical facility to follow the procedures in M-1, part I, paragraph 4.03. The local medical facility is responsible for fully developing the claim before sending the request directly to MAS (136) in Wilmington VAM&ROC. Wilmington will not do development in these cases, and the Adjudication Division will not look at a claim until MAS (136) has created a special Polish-Czech folder and development is complete.

(b) If a claim is received for compensation or pension from a Polish or Czech veteran who had no service with the U.S. Armed Forces, the regional office receiving the claim will disallow the claim for no qualifying service. These cases will not be transferred to the Wilmington regional office.

(5) **Section 156, Public Law 97-377, Restored Entitlement Program for Survivors (REPS).** Jurisdiction for these claims is split between the various regional offices and a special processing unit at the St. Louis regional office. The office having jurisdiction of the XC-file is responsible for determining basic eligibility and forwarding the claim (not the XC-file) to the St. Louis regional office.

b. **Philippine Cases.** Claims involving veterans of the Commonwealth Army of the Philippines while such forces were in the Armed Forces of the United States (July 26, 1941 through June 30, 1946), Special Philippine Scouts (Enlisted between October 6, 1945 and June 30, 1947) and Alleged or Recognized Guerrilla Service before July 1, 1946 (Peso Rate Cases) are under the exclusive and permanent jurisdiction (unless otherwise indicated) of the Manila regional office.

c. **Washington DC Regional Office (WRO).** C-files within the following classes are under the exclusive and permanent jurisdiction of WRO:

(1) **Service Before July 16, 1903.** If the veteran rendered **any** service before this date.

(2) **VA Employee - Veteran.** Any veteran employed in an office located in a foreign country.

(3) **Forfeiture Cases.** If forfeiture is invoked and benefits are not terminated, forward the file to WRO for termination under 38 CFR 3.669. The Manila regional office will terminate cases under its jurisdiction. Once terminated, the file will be returned to Central Office where it will remain until expiration of the appeal period or an appellate decision is rendered. At the end of this period, return the file to the regional office having jurisdiction of the geographical area where the veteran maintains a permanent address. That station will maintain the folder in locked files.

(4) **Foreign Residence.** Veterans residing in a foreign country, except Mexico, or outside the territories assigned to the regional offices in Puerto Rico, Hawaii and the Philippines. This does not apply to transients. Jurisdiction is determined by the veteran's residence and entitlement, not the residence of a dependent. If a claimant changes his/her address to an APO or FPO address and the folder is currently located at WRO, jurisdiction will remain at WRO. Do not transfer cases to WRO merely because a claimant has moved to an APO or FPO address.

(5) **General Law Cases.** Entitlement to compensation under the former general law, the Act of 1862, as amended. (38 U.S.C 352)

(6) **Protection provided by former Public Law 788, 74th Congress,** relative to the general law rate. (38 U.S.C 352)

(7) **Entitlement to naval pension** under 10 U.S.C 6159 and 6160.

(8) **Entitlement under a Special Act.**

(9) **Residents of U.S. Soldiers' and Airmen's Home, Washington, DC.**

(10) **Claims involving residence in enemy territory.** (38 U.S.C 3108, 3109)

(11) **Entitlement to chapter 31 educational benefits based on service in allied forces.**

(12) **Classified Records.** Claims involving service department information classified as "Confidential."

(a) Once an award or disallowance is processed and the appeal period expires, permanently transfer the claims folder to the regional office having jurisdiction over the veteran's place of residence.

(b) Classified material is retained in WRO in locked files. VA Form 70-3797, Cross Reference to Confidential Report, indicating existence and location of this material will be flash filed on the left side of the claims folder. This form will remain above all other material at all times.

(13) **Entitlement to emergency officers' retirement pay under Public Law 506, 70th Congress, as amended.**

(14) **Entitlement to Reserve Officers' retirement pay under Public Law 262, 77th Congress.**

d. **Incompetent Veterans.** If a fiduciary has been appointed by a court for an incompetent veteran, jurisdiction is in the regional office for the area in which the appointing court is located.

4.02 JURISDICTION OVER XC-FOLDERS

a. **Regional Office Jurisdiction.** Observe jurisdictional areas assigned to regional offices. For this purpose, jurisdiction of the Houston regional office includes the area comprising the country of Mexico. Except when WRO or the Manila regional office has permanent or initial jurisdiction, jurisdiction of cases in which initial reports of death are received is established as follows:

(1) **Existing Claims Folder.** The regional office having jurisdiction over the veteran's claims folder at the time of death, including employee cases.

(2) **No Claims Folder - Death After Service.** The regional office in the area where the preferred beneficiary resides when a claim for death benefits is pending in that office. The order of preference is surviving spouse, youngest child, mother and father.

(3) **No Claims Folder - Death in Service.**

(a) If death occurs in service and no claims folder exists, the regional office in the area where the preferred beneficiary resides has jurisdiction. The order of preference in these cases is surviving spouse, youngest child, mother and father.

(b) When there is no record of a potential claimant and death occurs in service, the regional office in the area where the veteran resided at the time of last entry on active duty has jurisdiction.

b. **Jurisdiction Based on Order of Preference.** Jurisdiction is established in the regional office in the area in which the primary payee or claimant resides, in the following order of preference:

(1) **Dependent or Beneficiary of Two or More Veterans.** The regional office having jurisdiction over the address of the dual claimant has jurisdiction of both XC-folders unless WRO or the Manila regional office has permanent jurisdiction of one or both of the folders.

(2) **Payee of Death Pension, Compensation or Dependency and Indemnity Compensation (DIC).** If there is more than one payee of death pension, compensation or DIC, the order of preference is surviving spouse, youngest child, mother, father. See subparagraph c(2) below.

(3) **Payee of Insurance.** When there is no claim for death pension, compensation or DIC or a claim was disallowed, the regional office having jurisdiction over the address of the insurance payee retains the file. If there is more than one payee, the order of preference is surviving spouse,

youngest child, mother, father, oldest sister, oldest brother, remarried surviving spouse.

(4) **Inactive Cases.** Cases in which no claim for death pension, compensation or DIC has been filed or disallowed cases in which no appellate action is pending are retained by the office of initial jurisdiction. If the inactive case is retired to an FRC or the RPC, jurisdiction will remain with the office that retired the folder. Transfer of jurisdiction is effected upon request by another regional office which has received a claim for death benefits by a person residing within its jurisdiction.

c. **Cases Under Permanent Jurisdiction of WRO.** WRO has permanent jurisdiction over the types of death cases specified below. If any such case is in a regional office, permanently transfer the XC-folder with any related records to WRO.

(1) **Service Prior to July 16, 1903.** If the veteran rendered any service prior to July 16, 1903.

(2) **Residence in Foreign Countries.** If the primary beneficiary or a claimant resides in a foreign country or any payee receives income in foreign currency which affects entitlement to VA benefits, WRO has jurisdiction. However, this subparagraph does not apply if the primary beneficiary resides in a foreign country or territory under the exclusive jurisdiction of the Houston, Honolulu, Manila or San Juan regional offices; or if exclusive jurisdiction is vested in the Manila regional office under subparagraph 4.02e. Residence is established upon receipt of a valid request for change of address from the claimant or payee. Before transferring a folder to WRO for the above reasons, a supervisor will ensure that the transfer is proper.

(3) **APO or FPO Addresses.** Cases in WRO in which the claimants or payees have APO or FPO addresses. (Do not transfer cases in regional offices to WRO merely for the reason that claimants or payees have moved to such addresses.)

(4) **Special Act.** If there is entitlement under a special act.

(5) **Dependent or Beneficiary of Two or More Veterans.** If a person is receiving or claiming death pension, compensation, DIC or insurance on account of the death of two or more veterans and one or more of the XC-folders is under the permanent jurisdiction of WRO.

(6) **Special Allowance, 38 U.S.C 412(a).** If there is entitlement to a special allowance under 38 U.S.C 412(a).

(7) **Reports Classified "Confidential-Security Information."** If an XC-folder contains material classified as "Confidential-Security Information."

d. **Cases Under Initial Jurisdiction of WRO.** WRO has initial jurisdiction of cases specified below. Except as provided in subparagraph (1)(c) below, permanently transfer these cases to WRO promptly upon report of death or the occurrence of the contingency establishing this jurisdiction.

(1) **Adjusted Compensation.** Cases involving initial settlement of adjusted compensation are retained in WRO until a claim for death benefits is received.

(a) If all action on claims for adjusted compensation is complete at the time of receipt of a claim for death benefits, transfer the file to the regional office of jurisdiction as determined in subparagraph a above.

(b) If adjudicative action has not been completed on a claim for adjusted compensation at the time of receipt of a claim for death benefits, transfer may be accomplished upon final adjudication of all pending claims.

(c) If a case is located in a regional office and further adjudication of adjusted compensation is necessary, temporarily transfer the XC-folder to WRO for that purpose.

(2) **Death in Service.**

(a) Cases of death in service or while in training or on officially authorized travel and WRO has custody of a claims folder established before death.

(b) Cases in which a claims folder was not in existence at the time of the veteran's death and the available address for the surviving spouse is indicated as a temporary address only.

(3) **Forfeiture Cases.** Except for those under the jurisdiction of the Manila regional office.

e. **Permanent Jurisdiction of Manila Regional Office.**

(1) Claims based on service with the Commonwealth Army of the Philippines while such forces were in the Armed Forces of the United States (July 26, 1941 through June 30, 1946), Special Philippine Scouts (Enlisted between October 6, 1945 and June 30, 1947) and Alleged or Recognized Guerrilla Service prior to July 1, 1946 (Peso Rate Cases) are under the exclusive and permanent jurisdiction (unless otherwise indicated) of the Manila regional office.

(2) Cases where the primary beneficiary resides in the Philippines.

(3) Forfeiture cases under Manila's jurisdiction.

4.03 CLAIMS FOR EDUCATION BENEFITS

The provisions of this paragraph cover the initial handling of applications for education benefits under 38 U.S.C chs. 30, 31, 32, 35, chapter 106 of title 10, Veterans' Job Training Act and Sections 901 and 903 of Public Law 96-342. For additional information on jurisdiction of education folders, see M22-2, part I, chapter 2.

a. **R&E Folders.** Applications under 38 U.S.C chapter 31 are processed by the office having jurisdiction over the area in which the veteran resides. This processing will include the development of the application and determination of eligibility and entitlement, preparation of the R&E and related folders and the determination of need for and completion of counseling. Once a veteran enters training, the folder is maintained by the office having jurisdiction over the area in which the veteran is training. See M28-2, part I, paragraph 1.01.

b. **DEA Folders.** Applications under 38 U.S.C chapter 35 are processed by the office having jurisdiction of the veteran's C- or XC-folder for a

determination of basic eligibility.

NOTE: Jurisdiction of applications under 38 U.S.C 1765 (peso payment cases) is in the Manila regional office. See M22-2, part I, paragraph 2.06.

c. **Chapter 30 Folders.** Chapter 30 claims are under the jurisdiction of the Atlanta, Buffalo, Muskogee and St. Louis regional offices. Claims for chapter 30 death benefits are handled by the St. Louis regional office only.

d. **Claims under Chapters 32 and 106 and Section 903.** Applications for education benefits under chapters 32 and 106 and Section 903 are processed by the office having jurisdiction over the area in which the veteran attends school. The C-folder is maintained in that office as long as there is an active education claim.

e. **Section 901 Folders.** Section 901 folders are under the jurisdiction of the Waco regional office only.

f. **Claims under the Veterans Job Training Act, Public Law 98-77.** The Job training folder and the claims folder must be in the same office. The folders are maintained by the office having jurisdiction over the area in which the veteran is training.

SUBCHAPTER 2. TRANSFER

4.04 PERMANENT TRANSFER OF CLAIMS AND XC-FOLDERS

Permanently transfer claims and XC-folders under the following conditions:

a. The veteran, preferred beneficiary, or authorized representative specifically requests transfer to the regional office of jurisdiction based on a permanent change of address.

b. A request for a physical examination is pending in the office serving the veteran's home address.

c. An application by the veteran for a VA benefit or a claim for an increase in benefits is pending in the regional office serving the veteran's home address.

d. If a loan default indebtedness is established, no current benefits are being paid, no claim is being processed, and there is no other outstanding indebtedness in the case, the station that originated the debt will immediately request the claims folder. If benefits are currently being paid, a claim is being processed or there is an active outstanding indebtedness in the case, the complete loan indebtedness records will be transferred to the station having claims folder jurisdiction.

e. To comply with procedures governing jurisdiction of employee-veteran records, see paragraph 4.07 and part I, paragraph 21.06.

f. Exclusive jurisdiction is in WRO.

g. Exclusive jurisdiction is in the Houston regional office because the veteran resides in Mexico.

h. Exclusive jurisdiction is in the Manila regional office because the veteran's claim is based on service with the Commonwealth Army of the Philippines, Special Philippine Scouts or Alleged or Recognized Guerrillas.

i. If a fiduciary has been appointed by a court for an incompetent veteran or preferred beneficiary, jurisdiction is in the regional office for the area in which the appointing court is located. (See paragraph 4.10e below.)

j. The claims folder is required by another office for litigation involving insurance benefits.

k. Jurisdiction is reassigned by Central Office.

l. When correspondence is received at a regional office not having custody of the claims folder, forward the document to the office having possession of the folder. The regional office having custody of the folder will determine if a transfer is in order.

4.05 PERMANENT TRANSFER OF PRINCIPAL GUARDIANSHIP FOLDERS

a. The Veterans Services Officer (VSO) or designee initiates the transfer of these folders. No folder will be transferred without the approval of the VSO or designee at the regional office where the folder is located.

b. Forward a copy of VA Form 70-7216a, Request for and/or Notice of Transfer of Veterans Records, to the regional office having jurisdiction of the corresponding claims folder.

c. The Authorization activity at the receiving station will enter the number of the regional office having jurisdiction of the guardianship file by the use of the CORR command. This three-digit field is shown on the M11 screen under the heading GDN.

4.06 CLASSIFIED RECORDS

a. Claims folders containing confidential material may be transferred after an award or disallowance is processed and the appeal period has expired. The confidential material will remain at WRO in the locked files.

b. File material classified "For Official Use Only" is kept in the claims folder. If the claims folder is transferred, this material will be transferred with it.

4.07 PERMANENT TRANSFER - VA EMPLOYEE-VETERAN RECORDS

a. Upon receipt of VA Form 70-4535, Notice of Employment, Transfer or Separation of Veteran, pull the claims folder and route the form and folder to a clerk. If the form is completed to show "Notice of Employment" or "Transfer" the clerk will review the folder to determine the office of jurisdiction. (See subpar. e below.) Before transfer, a claims examiner will review the folder to determine if transfer is in order.

b. The claims folder will be transferred to the jurisdictional regional office under the following conditions:

(1) If no rating or award action is pending, the claims folder is transferred at the expiration of 90 days after the date of employment.

(2) If rating or award action is indicated but has not been initiated, the claims folder is transferred immediately.

(3) If development of a claim is in progress, the claims folder is transferred upon receipt of the evidence requested. This includes reports of any authorized physical examination.

(4) If an employee-veteran is receiving education benefits and rating or award action for compensation or pension is indicated but not initiated, the clerk will immediately temporarily transfer the folder to the office having compensation and pension jurisdiction. Upon completion of the required action, the claims folder will be returned to the office having jurisdiction of the school or training establishment.

c. If VA Form 70-4535 indicates "Separation" other than for entrance into military service, the veteran's records will be retained in the office of jurisdiction at time of separation until transfer is in order for any reason shown in paragraph 4.04.

d. VA employee-veteran records are maintained in the locked files if jurisdiction of the records is assigned to the employing office.

e. The office of jurisdiction for active employee-veteran records for compensation or pension purposes is shown below.

STATION EMPLOYING VETERAN	OFFICE OF JURISDICTION
Central Office	Baltimore
Alabama: Montgomery	Columbia
Alaska: Anchorage	Seattle
Arizona: Phoenix	Albuquerque
Arkansas: Little Rock	Wichita
California: Los Angeles	San Francisco
San Diego	Los Angeles
San Francisco	Reno
Colorado: Denver	Salt Lake City
Connecticut: Hartford	White River Junction
Delaware: Wilmington	Philadelphia
District of Columbia	Wilmington
Florida: St. Petersburg	Atlanta
Georgia: Atlanta	Montgomery
Hawaii: Honolulu	San Francisco
Idaho: Boise	Fort Harrison
Illinois: Chicago (including West Side VA Medical Center)	Milwaukee
Indiana: Indianapolis	Louisville
Iowa: Des Moines	Chicago
Kansas: Wichita	Muskogee
Kentucky: Louisville	Nashville
Louisiana: New Orleans	Jackson
Maine: Togus	Boston
Maryland: Baltimore	Wilmington
Massachusetts: Boston	Manchester

Michigan: Detroit	Pittsburgh
Minnesota: St. Paul	Sioux Falls
Mississippi: Jackson	New Orleans
Missouri: St. Louis	Lincoln
Montana: Fort Harrison	Seattle
Nebraska: Lincoln	St. Louis
Nevada: Reno	Los Angeles
New Hampshire: Manchester	Togus
New Jersey: Newark	New York
New Mexico: Albuquerque	Waco
New York: Buffalo	New York
New York	Newark
North Carolina: Winston-Salem	Roanoke
North Dakota: Fargo	St. Paul
Ohio: Cleveland	Detroit
Oklahoma: Muskogee	Little Rock
Oregon: Portland	Boise
Pennsylvania: Philadelphia	Washington, D.C.
Pittsburgh	Cleveland
Philippines: Manila	Washington, D.C.
Puerto Rico: San Juan	New York
Rhode Island: Providence	Hartford
South Carolina: Columbia	St. Petersburg
South Dakota: Sioux Falls	Fargo
Tennessee: Nashville	Cleveland
Texas: Houston	Waco
Waco	Houston
Utah: Salt Lake City	Denver
Vermont: White River Junction	Providence
Virginia: Roanoke	Huntington
Washington: Seattle	Portland
West Virginia: Huntington	Winston-Salem
Wisconsin: Milwaukee	Des Moines
Wyoming: Cheyenne	Salt Lake City

4.08 PERMANENT TRANSFER OF XC-FOLDERS FOR INSURANCE PURPOSES

If an insurance center requests a determination which has not been made, permanently transfer the XC-folder to the Adjudication Division of the requesting Regional Office and Insurance Center (RO&IC). Annotate VA Form 70-7216a with "M21-1, part I, paragraph 30.09b(5)" as the reason for transfer. Any concurrent adjudicative issues are now under the jurisdiction of the RO&IC Adjudication Division.

4.09 RECORDS TO ACCOMPANY CLAIMS FOLDER - PERMANENT TRANSFER

The following records are transferred with the claims or XC-folder, as appropriate:

a. All records in calendar suspense file.

b. R&E folder and charge card. Annotate VA Form 70-7216a in item 13 to show the transfer of this folder.

c. Fiscal records, if indicated.

d. JOB training folder.

4.10 PROCEDURES FOR PERMANENT TRANSFER-OUT OF C- AND XC-FOLDERS

a. Requests for the permanent transfer-out of claims folders may be received via telephone contacts with other regional offices, requests by personnel at the transferring station, and from BIRLS through the BPRT command. Messages are printed daily from the BPR screen. These messages indicate which station is requesting the folder. If a folder transfer request is not cleared from the system within 15 days, it will appear in the FOLDER REQUESTS PAST DUE 15 DAYS on the BPR screen. The transfer request remains in the system until it is indicated on the LOC screen that THE FOLDER IS UNAVAILABLE FOR TRANSFER or until the requesting station receives the folder and the clerk updates the LOC screen to show that THE FOLDER IS LOCATED AT THIS STATION. After 30 days, the request moves from the FOLDER REQUESTS PAST DUE 15 DAYS to the FOLDER REQUESTS PAST DUE 30 DAYS.

b. All requests for permanent transfer-out of claims folders are routed to a clerk. The clerk will forward the request to the files activity for folder pull.

c. Once the folder is pulled, the clerk prepares VA Form 70-7216a, if the folder transfer request is not obtained via the BPRT command. If the folder transfer request is obtained via the BPRT command, staple a copy to the front of the folder and highlight the claim number and destination of the folder. Review the folder for unanswered correspondence or pending issues. If there is no unanswered correspondence or pending issue, transfer the file immediately. If there is unanswered correspondence or a pending issue, the clerk will forward the file to a claims examiner for review. If at all possible, the claims examiner will answer any unanswered correspondence or process any pending claim. If the claim cannot be processed because development is needed, the claims examiner will:

(1) Annotate VA Form 70-7216a or the BPRT print, "Adjudication action pending,"

(2) Cancel the pending issue,

(3) Reverse file the pending mail in the middle section of the claims folder and

(4) Return the file to the clerk.

d. If there is a VA Form 21-2507, Request for Physical Examination, pending, the clerk will notify the appropriate outpatient activity by telephone to cancel the request.

e. If the claims folder reveals that a VSO at another station has jurisdiction of a fiduciary in the case, the clerk will annotate on the VA Form 70-7216a or the BPRT print the location of the VSO having jurisdiction. Notify the VSO at that station of the transfer of records by sending a copy of the VA Form 70-7216a or the BPRT print. (See par. 4.04i above.)

f. If there is an R&E file (Chapter 31) to be transferred out with the claims folder, the clerk will review the file for the existence of a running award. Since award action may be necessary, notify the VR&C Division by telephone of the transfer.

g. The clerk will staple the BPRT print or the top copy of the completed VA Form 70-7216a to the front of the claims folder. Send one copy to the files activity for posting of the charge card and place another copy in the middle section of the claims folder. If there are other files being transferred with the claims folder, place a copy in these files.

h. When the VA Form 70-7216a or the BPRT print is received in the file room, the file clerk will annotate the charge card with "PTO" (permanent transfer out), the name and number of the station receiving the folder and the month the card will be eligible for disposal. The eligible month for disposal is the fourth month following the date of permanent transfer out.

i. If a folder is unavailable for transfer, notify the requesting station. The clerk will use the BUPD or BFLD command to notify the station. Use the three THE FOLDER IS UNAVAILABLE FOR TRANSFER: fields. Enter "X" for the folder type and the reason that the folder is unavailable for transfer. The CHARGED OUT TO, FORWARD THE CLAIM TO and NO RECORD fields are mutually exclusive.

(1) If the folder is charged out, put it on search. If the file cannot be located within 5 workdays of the date the transfer request is printed, show the actual charge out in the CHARGED OUT TO field on the LOC screen. The folder remains on search until it is located, and the transfer request can be honored.

(2) If BIRLS shows that the folder is located at a station but there is no record of it in the file bank, the files activity will conduct a thorough search for a misfile. If the folder is not at the station of record in BIRLS and there is no indication that it has been retired to RPC, the station of record in BIRLS will code the NO RECORD field on the LOC screen. When the requesting station receives the NO RECORD response, it will initiate circularization. (see pars 3.13 and 3.14)

(3) The FORWARD THE CLAIM TO field is used if the file cannot be transferred because it is needed at the station for processing of an education claim or other appropriate reason. The clerk will enter the name of the station in the FORWARD THE CLAIM TO field. When the requesting station receives a FORWARD THE CLAIM TO response, it must determine whether the file is needed or the mail can be forwarded to the station of record. If the file is needed at the requesting station, that station will contact the station of record by telephone and jointly determine proper jurisdiction of the file.

j. If another station attempts to initiate a transfer request during a pending transfer request for a folder, the following message is displayed: "THE FOLDER TRANSFER IS IN PROGRESS. YOUR REQUEST IS DENIED." The requesting station can then either attach a copy of the current LOC screen to the pending mail and forward it to the "IN TRANSIT TO" station or wait until the file is received at the "IN TRANSIT TO" station and initiate another transfer request. The type of mail the requesting station is holding will determine which course of action is appropriate.

k. The clerk can make an unsolicited transfer by indicating on the LOC screen that a folder is being sent to a particular station. The clerk will access the LOC screen via the BUPD or BFLD command and enter the necessary data in the field "X TRANSFER THE XXXXX FOLDER TO XXX ROUTING SYMBOL XXXXXXXX." The system requires no entry after ROUTING SYMBOL but the appropriate routing symbol at the receiving station will be entered if it is

known. The "IN TRANSIT TO STA/DATE" field will be updated by the system. The sending station must be the current station of record in BIRLS in order to initiate the folder transfer.

4.11 PROCEDURES FOR PERMANENT TRANSFER-IN OF C- AND XC-FOLDERS

a. Requests for the permanent transfer-in of claims folders are made to other regional offices, RPC or FRC's. Folders received from RPC or FRC's should be as the result of a specific request from the regional office. Folders received from other regional offices may have been requested or may be the result of an unsolicited request.

b. Folders from other regional offices will be requested by using the BFLD, BUPD, CEST or FNOD command. In some instances, the same commands can be used to request folders from the RPC. However, it may be necessary to use E-Mail to request XC folders from the RPC. See subparagraph 5.19b. Use BFLD in most situations to monitor folder management. Request folder transfer using the TRANSFER THE FOLDER TO fields on the LOC screen. Enter "X," the folder type, your station number, routing symbol, (e.g., X-CLAIM-323-211) and "UPD" in NEXT SCREEN. ("UPD" is not needed if the LOC screen was accessed via the BFLD command.) This immediately initiates a FOLDER REQUEST message to the BPR screen at the CURRENT LOCATION station. The requesting station's number and the date of request will appear in the IN TRANSIT TO fields. When the CURRENT LOCATION station prints its messages from the BPR screen, it will get a message requesting transfer of the folder to the requesting station. This station will continue to appear on the LOC screen as the IN TRANSIT TO station until the request is cleared from the system. The request is cleared if the CURRENT LOCATION station indicates on the LOC screen that THE FOLDER IS UNAVAILABLE FOR TRANSFER or the LOC screen is updated to show that THE FOLDER IS LOCATED AT THIS STATION. As long as the requesting station's number appears in the IN TRANSIT TO field, that station cannot send another request for transfer via BIRLS. Any necessary followups while the LOC screen shows that the folder is IN TRANSIT TO, must be made using the telephone or E Mail. Exercise care in making transfer requests as erroneous requests must be canceled by a telephone call to the other station.

c. Transfer requests for an XC-folder from an FRC are sent to the regional office nearest that particular FRC. The designated station batches and delivers the messages to the FRC. FRC will send the folder directly to the requesting regional office. Do not make a second request for a folder until ten working days after the date the original request was sent. Target cannot be used to make a second request; therefore, use VA Form 70-7216a, Request for and/or Notice of Transfer of Veterans Records. The regional offices and the corresponding FRC's are shown below:

VA Regional Office	FRC
Boston, MA (301)	Waltham, MA (010)
Newark, NJ (309)	Bayonne, NJ (020)
Philadelphia, PA (310)	Philadelphia, PA (021)
Washington, DC (372)	Suitland, MD (030)
Atlanta, GA (316)	East Point, GA (040)
Chicago, IL (328)	Chicago, IL (050)
Cleveland, OH (325)	Dayton, OH (051)
Wichita, KS (452)	Kansas City, MO (060)

St. Louis, MO (331)	NPRC, St. Louis, MO Civilian (061) Military (062)
Waco, TX (349)	Fort Worth, TX (070)
Denver, CO (339)	Denver, CO (080)
San Francisco, CA (343)	San Bruno, CA (090)
Los Angeles, CA (344)	Laguna Niguel, CA (091)
Seattle, WA (340)	Seattle, WA (100)

d. When the folder arrives at the receiving station, the clerk MUST update the two THE FOLDER IS LOCATED AT THIS STATION fields with "X" and the folder type. This location update is essential. If it is not accomplished, BIRLS will show the folder as IN TRANSIT indefinitely. The station sending the folder cannot update current location. After update, the receiving station becomes the CURRENT LOCATION, the sending station becomes PRIOR LOCATION and IN TRANSIT TO STA DATE is blank.

e. Claims folders requested from other offices have a BPRT print or a VA Form 70-7216a stapled to the front of the claims folder. The clerk will date stamp the BPRT print or the VA Form 70-7216a and file it down in the middle section of the claims folder. If the reason for transfer is BIRLS or "transfer request," there should be pending mail. Attach the mail to the folder, update the LOC screen, and recharge the folder to the appropriate individual. If no mail is found and there is no pending issue in Target, carefully review the folder to determine if there is a legitimate reason for the folder being transferred. If no reason is found, return the folder to the transferring station as having been received in error.

f. Review all unsolicited transfers to ensure they are proper. If the transfer was improper, return the claims folder to the transferring station with the reason for transfer shown as "improper transfer, jurisdiction refused."

NOTE: Folders requested in error from the RPC cannot be returned. Any folder received from a FRC must be retained by the regional office. Therefore, clerks must be very careful when requesting folders from RPC or a FRC.

4.12 PERMANENT TRANSFER OF DEA FOLDERS

The same basic procedures apply for a DEA folder request as for a regular folder request except that the DEA folder request is processed on the BID screen using the CEST or BUPD command.

4.13 PERMANENT TRANSFER OF DUAL BENEFIT CASES

If a beneficiary is receiving benefits involving two claims folders, these folders must remain together. Do not transfer one without the other.

4.14 TEMPORARY TRANSFER OF C- AND XC-FOLDERS

a. A temporary transfer is one in which an office lends records to another office for a specific purpose and for a limited length of time. The transferring office retains jurisdiction and the folder is promptly returned after the purpose for the transfer has been completed. Since jurisdiction is retained by the transferring office, requests for temporary transfers are NOT processed through BIRLS.

b. Prepare VA Form 70-7216a to temporarily transfer a folder. Staple the original to the front of the folder. The clerk will keep one copy for control and follow-up purposes and a copy will be sent to files for posting of the charge card. It is very important that the clerk keep a copy of the VA Form 70-7216a as this is the only control the transferring station has over the location of the folder. Once the folder is returned, the clerk will dispose of the control copy.

c. Before transferring the folder, check for a pending issue. Have an adjudicator review the pending issue to see if it can be worked. If not, do NOT cancel the pending issue on a temporary transfer but DISP the issue to show the transfer-out.

d. The clerk will conduct followups on folders that have been temporarily transferred out. Suspense dates for followups are set by local management. Generally, controls should be set for 6 months for folders going to Central Office or BVA. All other transfers generally require a 30-day suspense date.

e. Once a folder is returned from a temporary transfer, the clerk will file down the original copy of the VA Form 70-7216a in the middle section of the folder and dispose of the control copy. If the folder is not immediately being returned to files, the clerk will prepare a VA Form 20-3770A, Notification of Recharge of Numbered Records, to inform the files activity of the new location of the folder. If there is a pending issue, DISP the folder to the new location.

4.15 ASSOCIATION OF MISCELLANEOUS MATERIAL WITH RECORDS ON TEMPORARY TRANSFER

a. If material is received in a regional office which must be associated with a claims folder on temporary transfer, the clerk will forward the material to the office in possession of the claims folder. Use VA Form 70-3029, Transfer of Veteran's Miscellaneous Records, to transmit the material. This form identifies the claims folder by name, number, date of and reason for temporary transfer and the mail routing symbol shown on the suspense copy of VA Form 70-7216a.

b. If a claim is received and it can be processed without the claims file, establish a temporary file. Once the claims folder is returned, this material must be placed in the folder.

c. If applications and other material requiring action are received for a folder that has been temporarily transferred to the Board of Veterans Appeals, the clerk will acknowledge receipt of the material before forwarding it to BVA. The acknowledgement letter informs the correspondent that the material has been forwarded to BVA. Stamp or annotate the material "Acknowledged, (Date)_____," before it is forwarded.

4.16 TEMPORARY TRANSFERS TO CENTRAL OFFICE

a. A transmittal letter to the appropriate organizational unit is required under the following conditions:

(1) The case is being submitted for an advisory opinion, administrative review or forfeiture;

(2) It is desired, under the circumstances in a particular case, to invite attention to certain facts, or

(3) Central Office has requested the transfer together with a report or explanation of the action taken.

The transmittal letter sets forth the reasons for the transfer. Staple the letter to the front of the folder.

b. If a folder is sent to the Board of Veterans Appeals, any organizational element of Central Office at its request, or Central Office pursuant to 38 CFR 3.321(b), a transmittal letter is not needed. Use the "Remarks" section of VA Form 70-7216a to set forth the reason or authority for the referral.

c. Litigated Cases are discussed in paragraph 4.17.

d. If a claims folder is in Central Office for administrative or other consideration, other than on appeal, and evidence or information is received which requires immediate action, refer the correspondence to the Director, Compensation and Pension Service (211C) for appropriate disposition. If the case requires development or rating, award or authorization action, Central Office will promptly refer it to the office of jurisdiction for necessary action and return. The regional office will take immediate action and return the folder to Central Office for completion of the action which necessitated the transfer.

e. Cases in BVA on appeal may be referred to the Central Office Veterans Assistance Service for replies to inquiries not involving the appellate issue or requiring adjudicative action. If immediate adjudicative action is required, the clerk will request the return of the claims folder. Send the request to the Board of Veterans Appeals (014).

NOTE: If a computer error message necessitates reference to the claims folder for corrective action, the request will so specify, furnishing the numerical error code and message and identifying the transaction involved. This may permit furnishing the necessary documents for corrective action, avoiding the return of the claims folder to the regional office.

4.17 PROCESSING AND DISPOSITION OF FOLDERS IN LITIGATED CASES

a. If a claim for benefits payable by or to VA is involved, appropriately label the folder to disclose the fact that litigation is involved as a caution that no adjudicative action is to be taken on benefits in litigation without prior concurrence of the General Counsel. Temporarily transfer claims folders referred to Central Office as "Litigated Cases" to the Office of the General Counsel (02A1B) with a notation on VA Form 70-7216a, "Litigated Case." Transfers of litigated cases to other offices will be temporary subject to permanent assignment of jurisdiction.

b. If a suit is pending and the case is to be reconsidered administratively by VA, either at the request of the Department of Justice or because of a pending claim other than that involved in the litigation, forward the folder and the Department of Justice files through the Office of the General Counsel to the appropriate Adjudication Division for any action indicated. If Department of Justice files contain confidential information

(including reports and other material from the Federal Bureau of Investigation which should be returned by the Department of Justice), observe the following procedures:

(1) Upon receipt of the folder, carefully examine the Department of Justice files under the direction of the Adjudication Officer. Review the evidence of record having a bearing upon the issue under adjudication jurisdiction.

(a) Make photostats of documents and papers (except FBI reports and material and immigration material) that are deemed to be pertinent to the issue to be adjudicated. A claims examiner will certify these documents as true copies and place them in the claims folder.

(b) Return the original Department of Justice files to the Office of the General Counsel.

(2) Do not make or retain copies of reports or other FBI material. Exercise care to ensure that the material, while in the temporary custody of VA, is neither disclosed nor inspected by any person other than the officials charged with the responsibility for adjudicating the claim.

(a) In preparing an award or disallowance of benefits or an administrative decision, make a notation to show that reports from another agency were considered in arriving at the conclusion. Do not include any comment that will identify, either by name or other allusion, the witnesses who have furnished confidential information to the representatives of the FBI.

(b) Immediately upon completing the action, return the reports or other material of the FBI with the general files of the Department of Justice to the Office of the General Counsel for transmittal to the Department of Justice.

c. After a court determination in a case in which a lawsuit was filed, the claims folder will be received from the Department of Justice through the Office of the General Counsel. The General Counsel shall advise the regional office of the determination and its effect upon the benefits involved. In any case in which the Adjudication Division deems it appropriate, a request may be made of the Office of the General Counsel for copies of documents involved in the court proceedings.

d. Replies to inquiries not involved in litigation or requiring adjudicative action are prepared by the Central Office Veterans Assistance Service.

4.18 TEMPORARY TRANSFERS TO WRO - XC-FOLDERS

If jurisdiction is established in a regional office, all adjudicative actions except those over which WRO has jurisdiction are done by that regional office. A letter of explanation will accompany a folder transferred to WRO only if the reason for the transfer cannot be stated adequately on VA Form 70-7216a. Any pending claim will be referred to specifically in the transmittal letter or transfer form. XC-folders will be temporarily transferred to WRO for the following purposes:

a. The adjudication of claims for reimbursement for burial, funeral, and transportation expenses, or for accrued amounts, if the veteran's (or

dependent's) burial or last illness and burial expenses were paid or are payable in foreign currency, or if rates of foreign exchange are involved in payment.

EXCEPTION: If the burial was in Mexico, the folder should be temporarily transferred to the Houston regional office.

b. The filing of a claim by VA with another Federal agency if an allowance for burial, funeral and transportation expenses has been paid erroneously by VA.

c. The disposition of a claim against VA by another Federal agency when an allowance for burial, funeral, and transportation expenses has been paid erroneously by such other agency.

d. The adjustment of an award of adjusted compensation.

(1) If a claim for or an inquiry pertaining to adjusted compensation is received, transfer the XC-folder to WRO upon completion of any action currently required on other pending issues. Such transfers are permanent if there is no running award or pending claim for other death benefits; otherwise, the case will be temporarily transferred.

(2) If a complete reply was made to a previous inquiry, it is not necessary to transfer the folder for the purpose of a reply to an inquiry for the same information.

4.19 TRANSFER OF FOLDERS SUBJECT TO REVIEW BY THE UNITED STATES COURT OF VETERANS APPEALS (CVA)

During the 150-day period following a BVA decision, any transfer of a claims folder subject to review by CVA (See par. 3.29 for instructions on maintaining these folders in the regional office.) will be accomplished via overnight/express mail with a return receipt requested. Before the claims folder is sent, the Adjudication Officer or acting Adjudication Officer of the sending station must certify over his or her signature that while the claims folder was maintained at that station no material was added to or deleted from the record subject to review by the Court of Veterans Appeals. The certification, which may not be delegated to any lower authority, will be entered in the space provided on the file insert which BVA has placed on the center flap of the claims folder. When forwarded, claims folders will be addressed to Adjudication Officer (21) at the receiving station and annotated "DO NOT OPEN IN MAIL ROOM." The Adjudication Officer at each station shall ensure that the Administrative Division is aware of the priority of these claims folders and make special arrangements for having them hand delivered from the mail room to the Adjudication Officer.

a. When a claims folder is permanently transferred to another station during this period, it must be accompanied by the temporary file. (See par. 3.29d.) The receiving station will store the claims folder in its BVA secured area and establish a local control to return the claims folder to regular storage on the date indicated by BVA.

b. These claims folders may be temporarily transferred to another regional office, VA Central Office, BVA or General Counsel during the period in which special handling is required. They may **NOT** be temporarily transferred **ANYWHERE** else, including VA medical centers. Before

transferring any of these claims folders to Central Office, the regional office must coordinate the transfer with the C&P Regulations Staff (211B). Temporary transfer should be limited to the temporary file whenever possible, but the claims folder may be sent if necessary. The receiving station must store the claims folder in its BVA secured area but will not establish a control for the claims folder to be returned to normal storage. Before the claims folder is returned to the originating station, the Adjudication Officer or acting Adjudication Officer must certify that while the claims folder was maintained at that station no material was added to or deleted from the record subject to review by the Court of Veterans Appeals.

CHAPTER 5. FNOD PROCESSING

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CHAPTER 5. FNOD PROCESSING

5.01 PURPOSE OF FNOD PROCESSING

a. FNOD stands for First Notice Of Death. FNOD processing establishes or updates the veteran's BIRLS record when the veteran dies. FNOD processing can be accomplished under either the FNOD or CEST command. See paragraph 5.06. Process an FNOD only on a veteran's record.

b. Processing an FNOD in BIRLS causes the BIRLS system to send an electronic message (transaction 28) to the Compensation, Pension & Education (CP&E) master record at the Hines DPC.

(1) If the veteran has a running C&P award when the FNOD is processed, the award is stopped and an indicator is set in the master record which permits processing of burial and death claims and prohibits processing of any more live issues.

(2) A date of death must always be entered during FNOD processing. If the fact of death is established but the date of death is not known, process a SUSP transaction to suspend a running C&P award. Initiate development for the date of death.

(3) If an FNOD is processed with a date of death more than 12 months before the processing month, a C&P award is terminated DLP. VA Form 20-6560, Notice of Benefit Payment Transaction, with message code 623, STOP PAYMENT PROCESSED - DLP ESTABLISHED, is issued. Follow the procedure in paragraph 5.27 if VA Form 20-6560 with message code 623 is received.

(4) FNOD processing suspends a running award of CH 30 or CH 31 benefits. It does not suspend a CH 32 or CH 106 award. If the veteran has a running education award, refer the file to an adjudicator for further adjustment upon completion of FNOD processing. (Also see M22-2, part IV, par. 6.09.)

c. If an insurance file number or an insurance policy number is displayed on the VID and INS screens, a Notice of Death transaction is sent to the insurance office of jurisdiction in Philadelphia or St. Paul.

d. If the veteran's claim folder is in RPC when the FNOD is processed, a message is sent to the RPC advising them to move the file to the RPC NOD unit. (See par. 5.18a.)

5.02 WHAT CONSTITUTES AN ACCEPTABLE FIRST NOTICE OF DEATH?

a. Since processing an FNOD transaction in BIRLS causes the system to stop paying benefits to a veteran, it is essential that an FNOD be processed only upon receipt of an acceptable NOD (Notice of Death).

b. An acceptable NOD is one which furnishes sufficient information concerning the veteran to permit definite identification of the veteran's record and which identifies the source of the report of death. However, the source of the report of death need not be identified if the NOD is a returned check which indicates that the veteran is deceased.

c. An acceptable NOD need not originate with the veteran's next of kin. It can originate with a funeral home or other third party. The only requirements are that the NOD identify the veteran and identify the source of the report of death (unless a check is returned).

d. An acceptable NOD need not be in writing. If a telephone call clearly identifies the veteran and the caller and furnishes the date of death, a report of contact based on the telephone call can be an acceptable NOD.

5.03 RETURNED CHECK AS FIRST NOD

a. When a veteran's VA benefit check is returned to the Department of the Treasury a tape is transmitted to the Hines DPC. The tape shows the reason the check was returned. If a check is returned under reason code 3 (death of person entitled), the veteran's award and any apportionee awards are suspended.

b. Hines DPC sends VA Form 20-6560, Notice of Benefit Payment Transaction, to the regional office of jurisdiction when it processes a returned check. The VA Form 20-6560 indicating that a check was returned under reason code 3 may be used as an NOD.

5.04 INSURANCE CLAIM AS FIRST NOD

a. If VA Form 29-4125, Claim for One Sum Payment, VA Form 29-4125A, Claim for One Sum Payment, or VA Form 29-4125K, Claim for Monthly Payments (USGLI) is received as a first NOD, process an FNOD but do not create a lightweight folder. (See par. 5.13.) Forward the insurance claim and any supporting documents to the VA Regional Office and Insurance Center (VARO&IC) in either Philadelphia or St. Paul.

b. If an insurance claim and another claim for death benefits is received, process the FNOD and establish a lightweight folder. Forward the insurance claim to the appropriate insurance center. If only one death certificate is received, make a photocopy, certify the photocopy as an exact copy of the original document, and forward it to the insurance center with the insurance claim.

c. Refer to the INSURANCE JURIS field on the INS screen to determine which insurance center should receive the insurance claim. If there is no entry in the INSURANCE JURIS field, send the insurance claim to the insurance center having jurisdiction over the place of the veteran's death. Insurance center jurisdiction is shown in the current Consolidated Address and Territorial Bulletin.

d. Refer the insurance claim to the insurance center via OF 41, Routing and Transmittal Slip.

5.05 DUE PROCESS REQUIREMENTS IN FNOD PROCESSING

a. VA beneficiaries are entitled to due process of law before benefits are suspended or terminated. A fundamental principle of due process is that a beneficiary should be notified of actions which may result in reduction or interruption of benefit payments and should be given an opportunity to contest the proposed actions before the final decision is made.

b. There are some exceptions to the normal requirement for

predetermination (advance) notice. NOD processing is one of the exceptions. Although processing of an FNOD may cause an award of benefits to be stopped based on third party information, predetermination due process is not required.

c. Although predetermination notice is not required in connection with FNOD processing, contemporaneous notice may be required if processing the FNOD results in reduction or interruption of benefit payments.

d. Unless the requirement of contemporaneous notice is excused under one of the conditions listed in subparagraph g below, furnish contemporaneous notice of FNOD processing whenever the veteran has a running compensation or pension award at the time the FNOD is processed. Run a MINQ (Master Record Inquiry) against the M11 screen to determine if there is a running C&P award.

e. If contemporaneous notice of FNOD processing is required, address it to the "Estate Of _____." It must furnish the following information:

(1) That VA has received notice of the veteran's death.

(2) The date of death.

(3) The source of the NOD.

(4) That benefit payments have been stopped and the effective date of termination (usually the first day of the month of the veteran's death).

f. Any apportionee awards which are running at the time the FNOD is processed against the veteran's BIRLS record are automatically suspended or terminated. (See par. 5.22.) Furnish contemporaneous notice of FNOD processing to apportionees with running awards in all cases except where the apportionee furnished notice of the veteran's death to VA. No notice is required if the apportionee notified VA of the veteran's death or if the apportionee award was in suspense when the FNOD was processed.

g. When the report of the veteran's death is accompanied by the submission of any of the following, no contemporaneous notice is required:

(1) A certified or uncertified copy of a death certificate (including a telegraphic notice of death from a foreign service post official),

(2) A written notice of death from a medical facility (VA or otherwise),

(3) A claim for VA death benefits,

(4) VA Form 90-2008, Application for United States Flag for Burial Purposes,

(5) VA Form 40-4956, Record of Interment

(6) A VA insurance claim.

5.06 FNOD PROCESSING IN CONNECTION WITH CEST

a. FNOD's are processed in one of two ways: either by the FNOD command or by using the CEST command to establish a death-related end product such as 160, 140 or 190. Regardless of whether FNOD or CEST is used, the same basic screens are displayed and the same entries are required to process an NOD.

The main difference is that the 102 (claim establishment) screen and S99 (disposition) screen are displayed during CEST processing only. Also, CEST establishes a pending issue file (PIF) while FNOD does not. See chapter 1 for more information about CEST processing.

b. If the NOD is one of the following, use the CEST command:

(1) VA Form 21-530, Application for Burial Benefits,

(2) VA Form 21-534, Application for Dependency and Indemnity Compensation or Death Pension by Surviving Spouse or Child,

(3) VA Form 21-535, Application for Dependency and Indemnity Compensation by Parent(s),

(4) VA Form 21-601, Application for Reimbursement From Accrued Amounts Due a Deceased Beneficiary,

(5) VA Form 21-8834, Application for Reimbursement of Headstone or Marker Expenses,

(6) VA Form 21-551, Application for Accrued Benefits By Veteran's Surviving Spouse, Child, or Dependent Parent,

(7) VA Form 21-609, Application for Amounts Due Estates of Persons Entitled to Benefits,

(8) VA Form 21-614, Application for Accrued Amount of Veteran's Benefits Payable to Widow, Widower, Child, or Dependent Parent.

c. Use the FNOD command to process all reports of death of deceased veterans which are not received in connection with one of the types of claims listed in subparagraph b above.

5.07 READY SCREEN ENTRIES - CEST

a. If it is determined that the NOD should be processed via the CEST command, use the normal READY screen entries for CEST. (See par. 1.05.)

b. If the veteran's file number is not known, enter as much additional identifying data as possible to avoid creation of duplicate BIRLS records. It is particularly important to enter the veteran's Social Security number or service number whenever a CEST is processed without a file number. (See par. 5.11 concerning file number assignment when a BIRLS record does not already exist.)

5.08 READY SCREEN ENTRIES - FNOD

a. Required READY screen entries for the FNOD transaction are "FNOD," password, file number (if available) and the veteran's name.

b. If the veteran's file number is not available, enter as much of the following identifying data as possible: Social Security number, service number, date of birth, dates of service, insurance file number.

5.09 FNOD DATABASE SEARCH

a. The system will attempt to match the input data against an existing BIRLS record. If the system cannot locate an existing record in the BIRLS database, it may be necessary to assign a new file number. (See par. 5.11.) If multiple possibilities are found, the NUM (Record Selection) or NME (Name Only Selection) screen is displayed. Determine if any record located belongs to the veteran for whom the FNOD is being processed.

b. Review a record by entering "X" beside the record. Return to the selection screen by entering "SEL" in the NEXT SCREEN field.

5.10 REVIEW OF VID SCREEN - BIRLS RECORD ALREADY EXISTS

a. If the system locates an existing BIRLS record for the veteran, a VID screen is displayed. Verify that the data on the VID screen is accurate. Enter the date of death and make any necessary changes or additions on the VID screen.

(1) Enter one of the following in CAUSE OF DEATH: "UNKNOWN," "NATURAL," "COMBAT" or "OTHER."

(2) Enter a "Y" in the DEATH IN SERVICE field if the evidence shows that the veteran died in service.

b. If the file is located at another regional office, the LOC screen may be used to request transfer in of the file. (See pars. 4.10 and 5.12.)

c. If the file is at the RPC (376), see paragraph 5.13.

d. If the file is located at the station where the FNOD is being processed or at another regional office and transfer in of the file is not being requested, enter "UPD" in the NEXT SCREEN field.

5.11 FILE NUMBER ASSIGNMENT - NO BIRLS RECORD EXISTS

a. If the BIRLS database search does not locate an existing BIRLS record, assign a new file number during NOD processing. However, carefully follow the instructions in subparagraph b below to avoid creating a duplicate BIRLS record for a veteran who already has a file number.

b. Terminate CEST or FNOD processing by typing "END" in the NEXT SCREEN field unless ALL of the following information has been entered on the READY screen:

(1) Veteran's first name, middle name or initial, and last name.

(2) Veteran's service number if the veteran served before August 1969 in the Army or Air Force, before January 1971 in the Navy or Marine Corps, or before October 1974 in the Coast Guard.

(3) Veteran's Social Security account number if the veteran served after July 1969 in the Army or Air Force, after December 1970 in the Navy or Marine Corps, or after September 1974 in the Coast Guard.

(4) Veteran's date of birth.

c. Enter all available identifying information in addition to the minimum

required entries shown in subparagraph b above. It is particularly important to enter both the veteran's service number and Social Security number if they are available.

d. If the minimum information required by subparagraph b above has been entered but the BIRLS database search fails to locate an existing record, establish a new BIRLS record by following the procedures in paragraphs 5.13 through 5.15.

e. If the BIRLS database search fails to locate an existing record and the minimum information required by subparagraph b above is not available, terminate CEST or FNOD processing by typing "END" in the NEXT SCREEN field and write to the claimant or next of kin for additional identifying information. FL 23-80e, Request for Armed Forces Separation Records, may be used for this purpose. If the NOD mail is a claim, advise the claimant to respond within 30 days as no further action can be taken on the claim in the absence of a response.

f. If the next of kin or claimant responds to the request for additional identifying information but is unable to provide a required service number or Social Security number, develop by sending VA Form 21-3101, Request for Information, to the appropriate service department. Target cannot be used to send the 3101 request since a file number will not have been assigned.

g. If there is not enough information to identify an existing record or establish a new BIRLS record, maintain the NOD mail in the authorization pending file (See par. 3.28.) until development is complete. Do not put the NOD mail under control in Target even if it is an application for benefits such as a VA Form 21-530 or VA Form 21-534. If development fails to identify the record, remove the mail from the authorization pending file and return it to the claimant. If there is no valid address on the mail, place it in the military file. (See par. 3.26.)

5.12 C-FILE LOCATED AT REGIONAL OFFICE WHEN FNOD PROCESSED

a. If NOD material is received and a claims folder exists at the station processing the FNOD, enter date of death and cause of death and "UPD" in the NEXT SCREEN field on the VID screen.

b. If NOD material is received and a claims folder exists at another regional office, terminate CEST processing by entering "END" in the NEXT SCREEN field and resume processing under the FNOD command. Enter date of death, cause of death and "UPD" in the NEXT SCREEN field on the VID screen. Forward the NOD material to the regional office having jurisdiction of the claims folder.

c. The next time the folder is handled, mark an "X" before the C or SS number. It is not necessary to pull the folder just to mark it with an "XC" or "XSS".

5.13 NO CLAIMS FOLDER EXISTS OR CLAIMS FOLDER IN RPC WHEN FNOD PROCESSED - DETERMINING WHETHER TO ESTABLISH NOD FOLDER

a. If no claims folder exists or the claims folder is in the RPC when the FNOD is processed, establishment of a lightweight (NOD) folder may or may not be required. Whether or not a lightweight folder must be created will depend on the type of NOD mail received and if the veteran had a running award at the

time of death.

b. If the NOD mail is any of the following and a folder was not previously established, create a lightweight folder:

(1) VA Form 21-530, Application for Burial Benefits;

(2) VA Form 21-534, Application for Dependency and Indemnity Compensation or Death Pension by Surviving Spouse or Child;

(3) VA Form 21-535, Application for Dependency and Indemnity Compensation by Parent(s);

(4) VA Form 21-601, Application for Reimbursement From Accrued Amounts Due a Deceased Beneficiary;

(5) VA Form 21-8834, Application for Reimbursement of Headstone or Marker Expenses;

(6) VA Form 119, Report of Contact;

(7) VA Form 10-7132, Notice of Change in Status.

c. Establish a lightweight folder whenever the NOD mail is accompanied by correspondence requiring a reply or any documents of evidentiary value such as a death certificate, discharge document, medical records, etc.

d. Establish a lightweight folder if the veteran had a running or suspended award at the time of death. Do a MINQ before processing the FNOD to determine if there was a running award.

e. It is NOT necessary to establish a lightweight folder if:

(1) The NOD mail is not one of the forms shown in subparagraph b above, and

(2) The NOD mail is not accompanied by correspondence requiring a reply or documents of evidentiary value and

(3) There was no running award at the time of death.

f. Examples of NOD mail for which a lightweight folder need not always be created include VAF 90-2008, Application for United States Flag for Burial Purposes; VA Form 40-4956, Record of Interment; VA Form 29-4125, Claim for One Sum Payment; VA Form 29-4125A, Claim for One Sum Payment; and VA Form 29-4125k, Claim for Monthly Payments (USGLI).

5.14 HOW TO ESTABLISH LIGHTWEIGHT FOLDER IN BIRLS DURING FNOD PROCESSING

a. Establish a lightweight folder by going to the LOC screen. Enter "X" to the left of "ESTABLISH A" and enter "NOD" to the left of "FOLDER." Enter "UPD" in the NEXT SCREEN field. An "Establishment Data" print will be generated. File this print on the right side of the lightweight folder.

b. See chapter 2 for more information about establishment of lightweight folders.

5.15 PROCEDURE WHERE NO LIGHTWEIGHT FOLDER ESTABLISHED DURING FNOD PROCESSING - CLAIMS FOLDER IN RPC

a. If an FNOD is being processed, the claims folder is in RPC, and no lightweight folder is to be established (see par. 5.13), do not make an entry in the "NO CLAIM FOLDER EST RSN" field on the LOC screen.

b. If the NOD mail is an insurance claim, forward the insurance claim to the appropriate insurance center after processing the FNOD. (See par. 5.04.)

c. If the NOD mail is VA Form 90-2008, Application for United States Flag for Burial Purposes, enter "Y" in the BURIAL FLAG ISSUED field on the ICP screen and follow the procedures in subparagraph d below.

d. If the NOD mail is something other than an insurance claim and a lightweight folder is not being created, destroy the NOD mail under RCS VB-1, part I, item No. 13-052.200 after processing the FNOD. However, see paragraph 5.29 about furnishing applications for death benefits. If an application should be furnished under the criteria in paragraph 5.29, do so. Then destroy the NOD mail and any drop file copies of Target development letters. Do not send drop file copies of development letters to the RPC.

5.16 PROCEDURE WHERE NO LIGHTWEIGHT FOLDER ESTABLISHED DURING FNOD PROCESSING - NO CLAIMS FOLDER EXISTS

a. If an FNOD is being processed, no claims folder exists, and no lightweight folder is to be established (see par. 5.13), an entry must be made in the NO CLAIM FOLDER EST RSN field on the LOC screen.

b. If the NOD mail is VA Form 40-4956, Record of Interment, and no folder will be established, enter "DMA" in the NO CLAIM FOLDER EST RSN field.

c. If the NOD mail is an insurance claim (VA Form 29-4125, VA Form 29-4125A, or VA Form 29-4125K), enter "INS" in the NO CLAIM FOLDER EST RSN field.

d. If the NOD mail is VA Form 90-2008, Application for United States Flag for Burial Purposes, enter "ROI" in the NO CLAIM FOLDER EST RSN field on the LOC screen and enter "Y" in the BURIAL FLAG ISSUED field on the ICP screen.

e. Enter "ROI" in the NO CLAIM FOLDER EST RSN field if a folder is not being established and the mail is anything other than VA Form 40-4956, VA Form 90-2008 or an insurance claim.

f. If the NOD mail is an insurance claim, forward the insurance claim to the appropriate insurance center after processing the FNOD. (See par. 5.04.)

g. If the NOD mail is something other than an insurance claim and no lightweight folder is being established, destroy the NOD mail under RCS VB-1, part I, item No. 13-052.200 after having processed the FNOD. However, see paragraph 5.29 about furnishing applications for death benefits. If it is possible to send an application, do so. Then destroy the NOD mail and any drop file copies of Target development letters. If a form or dictated letter is used to transmit the application, do not prepare a file copy.

5.17 DISPOSITION OF "NOTICE OF DEATH DATA" PRINT

a. When FNOD processing results in establishment of a new BIRLS record or establishment of an NOD file in BIRLS, the system generates a "Notice of Death Data" VID screen print.

b. If a folder exists, file the "Notice of Death Data" print on the right side of the folder.

c. If the NOD mail will be destroyed under paragraphs 5.15d or 5.16g, destroy the "Notice of Death Data" print also.

5.18 RPC ACTIONS WHEN CLAIMS FILE IS IN RPC

a. Processing an FNOD for a folder which is in the RPC will send the following message to the RPC: "NOD ACTION FOR (STATION OF JURISDICTION). DELIVER TO NOD UNIT." Upon receipt of this message, RPC personnel pull the claims folder and review it for evidence of verified service and evidence that death may be service connected.

b. If the file contains evidence of verified service which has not already been entered into BIRLS, the RPC updates the BIRLS record within 3 workdays to reflect the verified service.

c. The RPC automatically forwards the claims folder to the regional office of jurisdiction if the file contains any of the following:

(1) A rating decision granting service connection for a cardiovascular condition.

(2) A rating decision granting service connection for a genitourinary condition.

(3) A rating decision granting service connection for a chronic disease.

(4) A rating decision with a combined evaluation of 10 percent or more for service-connected disabilities for which benefits were not awarded due to receipt of military retired pay.

d. If evidence does not indicate that the folder should be forwarded to the regional office, the folder will either be destroyed or retired to the St. Louis FRC. The determination as to whether a folder is destroyed or retired to the FRC depends on whether it is classified as a group 1 or group 2 folder.

e. RPC's classification of group 1 folders (to be destroyed) includes the following:

(1) **Education Only.** Folders documenting only education benefits or disallowances.

(2) **Dental Only.** Folders containing information relevant to a dental claim only.

(3) **VA Form 10-7131, Exchange of Beneficiary Information and Request for Administrative and Adjudication Action.** Folders created solely in connection with a VA Form 10-7131 request from a medical center.

(4) **Loan Guaranty Overpayment.** Folders created based on a loan guaranty overpayment.

(5) **No Award.** Folders created when a veteran applied for education, compensation, or pension benefits and for some reason the award was never completed.

(6) **Empty Folders.**

f. The RPC's classification of Group 2 folders (to be retired) includes the following:

(1) **Running Awards.** Cases with running compensation awards which were relocated to make more space available at regional offices.

(2) **Disallowed C&P.** Folders created when a veteran's claim for compensation or pension was disallowed.

(3) **Terminated C&P.** Folders for which compensation or pension awards were terminated.

(4) **Documents of Evidentiary Value.** Folders containing documents of evidentiary value such as birth certificates, marriage certificates, and medical records when no NOD folder exists at a regional office.

g. Before destroying a group 1 folder, RPC removes documents of evidentiary value. Certain documents relating to military service will be forwarded to the National Personnel Records Center (NPRC). If there are other documents in the folder (e.g., marriage certificates, divorce decrees, postservice medical records) and an NOD folder exists at a regional office, the documents will be sent to the regional office to be filed in the NOD folder. When all documents of evidentiary value have been removed from the folder, BIRLS will be updated, and the folder and any remaining documentation will be destroyed by shredding.

h. After processing by the RPC NOD unit, folders classified as group 2 will be filed in a separate file bank (the NOD File Bank) in terminal digit order until it is time for the folders to be retired to the FRC.

i. The BIRLS record will be updated as follows:

(1) **Group 1 Folders:** A "Y" will be entered in the FOLDER DESTROYED field on the LOC screen.

(2) **Group 2 Folders:** Location "376" will continue to appear in BIRLS as the claims folder location until the folder is retired to FRC.

5.19 REGIONAL OFFICE RECALL OF FOLDERS FROM RPC

a. Before processing an FNOD on a case which is in RPC, review the NOD materials and run a MINQ to determine if the veteran had a running C&P award. Recall the claims folder from RPC in the following situations:

(1) A claimant raises the issue of service connection for cause of death or evidence accompanying a claim raises the issue of service connection for cause of death.

(2) The Target M13 screen shows that the veteran was service connected for a disability that might be related to the cause of death. If there is any question that the cause of death might be related to one of the service connected disabilities on the M13 screen, consult the rating board or a supervisor.

(3) The veteran had a running award at the time of death and the veteran's dependency code is other than 00.

b. The Target system can be used to request transfer of the claims folder from RPC as long as the request is sent no later than the day the FNOD is processed. If the FNOD was processed before the day recall of the claims folder was requested, accomplish recall by sending an E-Mail message to "MAIL VBA RPC/231 NOD." Send a separate E-Mail message for each folder requested. Furnish the file number, the veteran's name, the station to which the file should be sent, and the routing symbol to which the file should be sent. Prepare a charge card (VA Form 3025) for the folders requested from the RPC. Annotate the charge card, "Recalled Red-Rope Folder from RPC" and show the date the request was initiated.

c. If a claims folder is recalled from RPC and previous NOD action has resulted in creation of a lightweight folder, ensure that the two folders are associated and that the material is combined in the claims folder. The system will automatically consolidate the claims and NOD folders in BIRLS when an update is processed reflecting receipt of the claims folder from RPC.

5.20 VERIFICATION OF SERVICE

a. The BIRLS VID screen can be used as proof of service if:

(1) Character of Service is "HON" or "UHC," and

(2) Separation Reason is "SAT," and

(3) There is a "Y" in the VADS field on the VID screen, and

(4) The veteran's RAD is 9/1/75 or later.

b. If there is no "Y" in the VADS field or the veteran's RAD is not 9/1/75 or later, the VID screen can still be used as proof of service if:

(1) Character of Service is "HON" or "UHC," and

(2) Separation Reason is "SAT," and

(3) There is a "Y" in the VERIFIED field on the VID screen.

c. If service is not verified in BIRLS and proof of service accompanies the NOD, enter service information during CEST or FNOD processing. See 38 CFR 3.203 concerning acceptable proof of service.

d. If acceptable proof of service is not received, the VID cannot be used as proof of service (See subpars. a and b above), and the claims folder is located in RPC, process the CEST or FNOD.

(1) When the CEST or FNOD is processed, RPC will receive a BIRLS message instructing them to move the claims folder to the RPC NOD Unit.

(2) Before filing the folder in the NOD Unit, RPC personnel will review the folder for verification of service.

(3) If service is verified, RPC will process a BUPD to update service on the VID screen. RPC will process the BUPD within 3 workdays of the date the CEST or FNOD was processed by the regional office. (See par. 5.18b.)

(4) If the claims file was in RPC and acceptable proof of service does not appear on the VID screen within 3 workdays of processing the CEST or FNOD, assume that there was no verification of service in the claims folder.

e. If service cannot be verified by evidence accompanying the claim or VID screen entries, request proof of service via the Target 201/202 screens or VA Form 21-3101, Request for Information.

5.21 CHECK INTERCEPT PROCEDURES

a. Generally a check intercept is generated automatically when an FNOD is processed against a running compensation or pension award.

b. Preparation of a check intercept teletype is still required in the following situations:

(1) The FNOD is processed after the 26th of the month (or the 23rd of February).

(2) There is a pending pay change or change of address.

c. If check intercept cannot be automatically generated, one of the following legends appears during FNOD processing:

(1) "CHECK INTERCEPT NOT ISSUED - SEE M21-1, 17.04j,"

(2) "PAY CHANGE PENDING - CHECK INTERCEPT FOR PRIOR ADDRESS REQUIRED."

d. If one of the messages listed in the preceding subparagraph is received, initiate check intercept mailgram procedures as follows:

(1) Obtain a MINQ of the M11 screen.

(2) If the M11 screen has an entry in the DIRECT DEPOSIT field, prepare VA Form 20-8854a, Mailgram-Intercept and Recall of Direct Deposit Payment, in an original and one copy. Enter the payee's name, file number, payment amount and reason for recall on the mailgram document. Deliver both copies to the Finance Division. Finance will complete all other required entries and will control the VA Form 8854a. Annotate the file "VA Form 20-8854a to Finance (Date)."

(3) If the M11 screen has no entry in the DIRECT DEPOSIT field, prepare VA Form 20-8854, Mailgram-Intercept and Recall of Benefit Check. Address the mailgram to the postmaster at the city and state where the payee's last check would have been mailed and deliver it to the Data Terminal Unit for immediate transmission.

(4) When mailgrams cannot be expected to be received in time to prevent release of a benefit payment, notify the postmaster or financial institution

concerned by telephone. Prepare a VA Form 119, Report of Contact, and file it in the claims folder. See part I, paragraph 17.04j.

5.22 ADJUSTMENT OF APPORTIONEE AWARDS

a. Apportionee awards are suspended if the veteran's check is returned for reason code 3 (death of person entitled) or if an FNOD is processed without a date of death.

b. Apportionee awards are terminated effective the first of the month of the veteran's death if a date of death is entered during FNOD processing. If an overpayment is created, VA Form 20-6560 is generated showing the status of the account. (See par. 5.05f.)

c. If the apportionee award was in suspense at the time the FNOD was processed, the award is terminated DLP. VA Form 20-6560 with message code 622, DETERMINE DISPOSITION PROCEEDS DUE AT DEATH, is produced showing the amount due.

5.23 DISPOSITION OF ISSUES PENDING AT VETERAN'S DEATH

a. End product credit is due for any pending issues which were established in Target but not resolved before notice of the veteran's death was received.

b. Processing an FNOD clears any live (CPL) pending issues which have not already been authorized. End product credit is taken.

c. Pending issues on apportionee records are also cleared when an FNOD is processed against the veteran's record.

d. Rating decisions signed after the date of the veteran's death but before the fact of death was known are void. However, do not destroy these ratings.

e. See part I, paragraph 18.30 concerning appeals pending at the veteran's death.

5.24 PRESIDENTIAL MEMORIAL CERTIFICATES - ELIGIBILITY

a. Presidential Memorial Certificates (PMC) are sent to the next of kin or other eligible recipient to honor the memory of deceased veterans who were discharged under honorable conditions. The actual certificates are prepared in VACO (43F) based on information furnished by field stations. (See par. 5.25a.)

b. Eligibility for a PMC exists if the veteran received an "honorable" or "general" discharge.

(1) Service must be verified in BIRLS (paragraph 5.20) or there must be other evidence of qualifying service which meets the requirements of 38 CFR 3.203 before a PMC can be issued. However, do not develop a veteran's service solely to determine PMC eligibility. See paragraph 5.25f.

(2) If there were two separate periods of service with the first discharge under honorable conditions and the latter under dishonorable conditions, do not issue a PMC unless there is a specific request from the

next of kin.

(3) Wartime service is not a requirement for issuance of a Presidential Memorial Certificate.

c. A death certificate need not be of record before a PMC can be issued. A PMC may be issued if a notice of death is received which meets the requirements of paragraph 5.02.

d. A Presidential Memorial Certificate may be authorized to any of the following:

(1) The next of kin.

(2) A relative or friend upon request.

(3) Authorized service organization representatives who are acting on behalf of a relative or friend of the deceased veteran.

e. The "next of kin" for purposes of authorizing a memorial certificate is defined in order as: surviving spouse, oldest child, mother, father, oldest sister, oldest brother.

f. More than one certificate may be issued if specifically requested by the veteran's survivors.

g. Memorial certificates are not authorized for:

(1) Death-in-service cases (except upon request).

(2) Presumptive death cases.

(3) Cases of missing veterans.

(4) Private organizations that wish to honor deceased members by display of the memorial certificate.

(5) Cases in which there is any question concerning the type of discharge the veteran received from the Armed Forces.

h. If an applicant requests a memorial certificate but the veteran was not honorably discharged, advise the applicant that there is no eligibility for the memorial certificate. Do not furnish notice of procedural and appellate rights. Do not make a character of discharge determination solely to determine eligibility for the PMC.

5.25 PRESIDENTIAL MEMORIAL CERTIFICATES - PROCESSING

a. The actual certificate is prepared in VACO by the PMC Staff (43F). The individual certificates are done from listings printed out at VACO from the RDPC's. The listings show the name of the veteran as well as the name, address, and relationship of the next-of-kin. PMC data received from the RDPC's are generated by regional office input.

b. There are three ways to request issuance of a PMC.

(1) During CEST processing.

(2) During FNOD processing.

(3) By using the PMCS command.

c. The PMC screen is automatically displayed during CEST and FNOD processing. It appears after the S99 screen during CEST and after the VID screen during FNOD processing. The PMC screen can be accessed directly under the PMCS command only if a PMC diary was previously established.

d. Issue only one PMC unless multiple certificates are specifically requested. In order to avoid sending more than one certificate, routinely complete the PMC screen only if a date of death is entered during CEST or FNOD processing.

(1) If a date of death is already in the BIRLS record and a claims or NOD folder exists at a regional office, assume that the PMC has already been sent or that a diary was established. Exit the PMC screen by typing "END" in the NEXT SCREEN field. However,

(2) If a date of death is already in the BIRLS record, no folder exists at a regional office, and service is not verified in BIRLS, assume that a PMC has not already been issued. If no more than 12 months have elapsed since the date of the veteran's death and proof of service is now of record, issue the PMC.

e. The PMC screen has two parts.

(1) The top part displays the veteran's name, file number, and other identifying information. This information is displayed from the BIRLS record if one exists or from entries on the READY screen. It cannot be changed during CEST and FNOD processing, but during PMCS processing any fields which are blank can be entered.

(2) The bottom part of the PMCS screen is for entry of the title, name, address, and relationship of the person who is to receive the PMC. It is essential that this information be entered accurately since it is the source of the printout from which the PMC is prepared in VACO. See subparagraph a above.

f. In some instances it will not be possible to issue a PMC because the veteran's service is not verified. In this event, apply the following procedures:

(1) If a claims or NOD folder is located at the station processing the NOD mail, access the PMC screen but make no entry in the fields for PERSON TO BE ISSUED CERTIFICATE. Instead, make an "X" in the DIARY field on the PMC screen. The DIARY field can be entered only during CEST and FNOD processing. It cannot be entered during PMCS processing. The DIARY field and the PERSON TO BE ISSUED CERTIFICATE fields are mutually exclusive.

(2) If no folder exists and none is being created (paragraph 5.13), exit the PMC screen by typing "END" in the NEXT SCREEN field.

(3) If no folder is at the station processing the NOD mail (paragraph 5.13) but there is a claims folder in RPC, hold the NOD mail for 5 workdays since RPC may update service data in BIRLS (paragraph 5.18b).

(a) If after 5 workdays service is still not updated in BIRLS, do not send the PMC.

(b) If after 5 workdays service is verified in BIRLS, process another FNOD transaction to access the PMC screen and issue the PMC.

g. Entry of an "X" in the DIARY field will establish a 60-day diary to permit verification of service or clarification of the next of kin's name and address. At the end of 60 days, the diary record must be called up within 7 days or it will be lost. If it is not possible to issue the PMC before the diary record is lost, process another FNOD transaction to get the PMC screen.

h. Use the following procedure to call up maturing PMC diaries:

(1) Enter the command "PMCS," password, and "PRT" in the SCREEN NUMBER field.

(2) Enter the suspense date (60 days from the date the diary was established) in the EOD field. To print diaries for a range of dates, enter the inclusive dates in the EOD and RAD fields. The dates entered cannot be later than the current date.

(3) The maturing diaries will print out on a regular tear sheet.

i. From the list of maturing diaries, review the individual files to determine if a PMC can be issued. If it can, use the PMCS command to send the certificate. Required READY SCREEN entries are "PMCS," password, veteran's file number, veteran's name. Diary records are automatically deleted if a certificate record is created or if no action takes place on a record within 7 days of the date the diary matures (67 days from the establishment date).

j. If a diary exists, the station attempting to access the diary record via the PMCS command must be the same station that established the diary. If the inputting station is not the same as the office of jurisdiction, the READY screen will display the following error message: CONTACT THE STATION OF JURISDICTION (XXX).

k. If a request for a PMC is received and the request is not in connection with a claim or NOD, process it as follows:

(1) If the XC-file is located on station, verify that the veteran had honorable service. Use the FNOD command to get the PMC screen and issue the certificate.

(2) If a file number has been assigned and the XC-file is located at another regional office, forward the request to the station having possession of that file.

(3) If a file number has not been assigned and the request satisfies the requirements of paragraph 5.02, treat the request for a PMC as an NOD.

5.26 CORRECTION OF ERRONEOUS REPORT OF DEATH - VETERAN NOT DECEASED

a. If it is determined that an FNOD was erroneously entered and that the veteran is not deceased, process a BUPD to delete the date of death, cause of death, and any other erroneous information from the BIRLS record.

b. When the BIRLS record has been updated, refer the file to an adjudicator for award action to resume any payments which were erroneously interrupted.

c. If a group 1 claims folder (par. 5.18e) was located at the RPC at the time of death, do the following:

(1) Rebuild a red-rope folder.

(2) Destroy the lightweight folder if one was created.

(3) Send an E-Mail message to the BIRLS Adjustment Unit requesting that the DES indicator be removed from the LOC screen and that the folder location be updated. Also request that the NOD folder be removed from the LOC screen if an NOD folder was created. Use the following mailbox: MAIL VBA RPC/BIRLS ADJ. Include the file number and the veteran's name.

d. If a group 2 claims folder (par. 5.18f) was located at the RPC at the time of death, do the following:

(1) Send an E-Mail message to the BIRLS Adjustment Unit. Indicate that the record was erroneously XC'd and request that the file be returned to the live file bank. Use the following mailbox: MAIL VBA RPC/BIRLS ADJ. Include the file number and the veteran's name.

(2) Destroy the lightweight folder.

5.27 CORRECTION OF ERRONEOUS REPORT OF DEATH - WRONG DATE OF DEATH

a. If an FNOD was processed with the wrong date of death but the date erroneously entered was within the same month as the actual date of death, process a BUPD to correct the date of death in BIRLS. If the veteran had a running C&P award, it will have been properly adjusted as long as the correct month of death was entered during FNOD processing. If the veteran had a running education award, refer the file to an adjudicator (par. 5.01b(4)).

b. If an FNOD is processed with a date of death which is earlier than the actual month of death and the veteran had a running award, an erroneous overpayment may be established in the system. If this happens, refer the case to an adjudicator for preparation of an OF 41 to Finance Division requesting that a fiscal transaction be processed to eliminate the erroneous accounts receivable. Explain that the overpayment was created because an erroneous date of death was entered into the system. Process a BUPD to correct the date of death in BIRLS.

c. If an FNOD is processed with a date of death which is later than the actual month of death and the veteran's uncashed benefit checks are returned, a proceeds segment will be established in the master record. If all returned checks represent payment for the month of death or later, ask Finance Division to return the amount in proceeds to appropriations. This can be done by OF 41 or by annotation on VA Form 20-6560. Process a BUPD to correct the date of death in BIRLS.

d. If an FNOD is processed with a date of death which is later than the actual month of death but the veteran's benefit checks are not returned, an adjudicator must determine how much of an overpayment would have been created

had the correct date of death been entered. When the amount has been determined, send an OF 41 to Finance requesting that a fiscal transaction be processed to establish the accounts receivable. Explain that the overpayment was not established by the system because an erroneous date of death was entered. Process a BUPD to correct the date of death in BIRLS.

5.28 USE OF VAF 21-8092, NOTICE OF DEATH INFORMATION

Sufficient copies of VA Form 21-8092 will be produced and distributed as follows:

a. One copy to the VSD Guardianship Section if Target shows anything other than "C-DIRECT" in the COMP-PMT field on the M11 screen.

b. One copy to the examining medical facility if review of the veteran's folder shows a pending VA Form 21-2507, Request for Physical Examination, and the veteran died in other than the medical activity scheduled to conduct the examination.

5.29 FURNISHING APPLICATIONS FOR DEATH BENEFITS

a. Review the NOD mail, the claims folder (if it is on station), and run MINQ's against the Target M11 and M13 screens to determine whether an application for death benefits should be furnished to the survivors of the deceased veteran.

b. CEST end product 400 (if no other EP is appropriate) and use the Target 209 screen to send VA Form 21-534, Application for Dependency and Indemnity Compensation or Death Pension by Surviving Spouse or Child, if the name and address of a surviving spouse or child is of record and,

(1) The veteran died in service, or

(2) There is any indication that the veteran's death might have been service-connected, or

(3) The veteran ever received compensation or pension.

c. CEST end product 400 (if no other EP is appropriate) and use the Target 209 screen to send VA Form 21-535, Application for Dependency and Indemnity Compensation by Parent(s) (Including Accrued Benefits), if the name and address of a parent is of record and,

(1) The veteran died in service, or

(2) There is any indication that the veteran's death was service connected.

d. A form or dictated letter may be used to dispatch VA Forms 21-534 and 21-535 in lieu of the Target 209 screen.

e. Do not send out VA Form 21-530, Application for Burial Benefits, in the absence of a request for the form or an inquiry about burial benefits. If a request for a burial application or an inquiry about burial benefits is received, transmit the VA Form 21-530 via the Target 209 screen. Alternatively, a form or dictated letter may be used.

f. An end product 400 will automatically cancel if a date of claim is entered and a letter is sent. If an end product 400 is established for letter generation purposes but the letter is not sent, it will be necessary to cancel the pending issue via the PCAN command.

5.30 REQUESTS FOR BURIAL IN NATIONAL CEMETERY

a. Forward requests for interment in a national cemetery to the Director of the national cemetery where interment is desired.

b. Addresses of national cemeteries can be found in the Consolidated Address and Territorial Bulletin and in the IS-1 Fact Sheet, Federal Benefits for Veterans and Dependents.

5.31 HEADSTONE OR MARKER CLAIMS

a. VA Form 40-1330, Application for Standard Government Headstone or Marker, will be forwarded to VACO (42A) for processing.

b. VA Form 21-8834, Application for Reimbursement of Headstone or Marker Expenses, will be processed according to instructions in part I, paragraph 43.26b.

5.32 IDENTIFICATION OF UNKNOWN REMAINS BY PUBLIC AUTHORITIES

Identification of unknown remains will be processed by the appropriate public authorities through reference to local records and the files of the FBI. VA will not accept requests for identification of unknown remains from public authorities, funeral directors or other responsible (interested) persons.

a. If a request for identification of unknown remains is made in person, Veterans Services Division will advise the interested party to submit the request to the FBI.

b. If a request for identification of unknown remains is received through the mail, the request will be returned, by the most expeditious means, to the interested party who will be advised that the request must be submitted to the FBI.

5.33 FBI IDENTIFICATION OF UNKNOWN REMAINS

The FBI will automatically notify VA Records Processing Center (232) when remains are identified with fingerprints in its military files as a result of submission by sources outside VA.

5.34 IDENTIFICATION OF KNOWN REMAINS BY VA

a. VA will accept requests for identification of a known deceased person alleged to be a veteran if:

(1) The name of the deceased is established and submitted with fingerprints, or

(2) Fingerprints have already been submitted to the FBI and additional data such as name and service number are obtained and submitted with the FBI report on FD-258, Federal Bureau of Investigation, U.S. Department of Justice

best copy available

Fingerprint Application Chart.

b. Do not use SF 87, Fingerprint Chart, for submission to the FBI for identification of deceased persons.

c. If a request for identification of known remains is made either in person or through the mail, forward the fingerprints and all additional data to VA Records Processing Center (232), P.O. Box 5020, St. Louis, Missouri 63115. The requesting office will be notified as soon as possible whether or not the fingerprints have been identified. Take no further action until notification has been received unless positive identification as a veteran is made through other means.

CHAPTER 6. BENEFICIARY IDENTIFICATION AND RECORDS LOCATOR SUBSYSTEM (BIRLS)

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CHAPTER 6. BENEFICIARY IDENTIFICATION AND RECORDS LOCATOR SUBSYSTEM (BIRLS)

6.01 GENERAL

a. BIRLS is the acronym for Beneficiary Identification & Records Locator Subsystem. The main computer for this subsystem is located at the Austin Data Processing Center (DPC). Field stations access BIRLS through the Target system.

b. A BIRLS record exists for each veteran or other beneficiary for whom one of the following types of files has been established: CLAIMS, NOD, CH 35, R&E and CH 30.

c. This subsystem's primary purpose is to track folder location and provide information about beneficiaries. It is also used to request folder transfer and to respond to requests for transfer.

d. Although benefits are not paid directly through BIRLS, the subsystem is linked with the CP&E (Compensation, Pension and Education) benefits payment system at the Hines DPC and the Insurance system in Philadelphia. The Hines benefit payment system draws information from BIRLS at various points in the process of establishing a pending issue file and generating a benefit award. BIRLS is periodically updated as a result of this interface.

6.02 OVERVIEW OF BIRLS COMMANDS

Use one of the commands listed below to access BIRLS. The commands are further explained in subsequent paragraphs.

a. **BADD (BIRLS ADD).** Allows entry of a new veteran's record into BIRLS when a CEST or FNOD is not appropriate.

b. **BFLD (BIRLS FOLDER).** Allows a folder transfer request or update of folder location on the LOC screen. (Do not use for DEA folders.)

c. **BINQ (BIRLS INQUIRY).** Allows an inquiry to a veteran or beneficiary BIRLS record.

d. **BPRT (BIRLS PRINT).** Generates a request for pending prints from the BIRLS Print (BPR) screen.

e. **BUPD (BIRLS UPDATE).** Allows the addition, correction, or deletion of data from an existing veteran or beneficiary BIRLS record.

f. **CEST (CLAIMS ESTABLISHMENT).** Used to establish end product controls, request transfer of CLAIMS, NOD, CH30, and DEA folders, create folders and enter BIRLS data during CEST processing. (See ch. 1.)

g. **DUPC (DUPLICATE RECORDS CONSOLIDATION).** Permits consolidation of two BIRLS records for a single veteran. Data entries are permitted. Command also identifies beneficiary records which may require adjustment. Generates a message to station of chapter 35 jurisdiction.

h. **FNOD (FIRST NOTICE OF DEATH).** Processes a first notice of death for a veteran's record when CEST processing is not appropriate. Allows data entry and NOD folder establishment.

i. **MCRI (MICROFILM INQUIRY).** Generates a microfilm inquiry to VA Records Processing Center (RPC), St. Louis, MO.

j. **MCRO (MICROFILM RESPONSE).** Permits RPC to respond to MCRI's (microfilm inquiries) from requesting stations. This command is restricted to RPC 376.

k. **RDEL (RECORD DELETE).** Allows VACO and RPC to delete BIRLS records. VARO's are not permitted access to this command.

6.03 SPECIFIC USE OF THE BIRLS COMMANDS

a. **The BADD Command.** Use this command to add a veteran's record into the BIRLS system. Ready Screen entries are BADD, password, veteran's name and one or more identifying numbers except for the file number. If Target locates a record, the VID screen is displayed and BADD processing is terminated. If no record is located, Target displays instructions either to terminate or continue processing. To terminate, type "END" in NEXT SCREEN field or, to continue, depress the ENTER key without the NEXT SCREEN entry. Enter verified data on the VID screen and, if appropriate, the NO FOLDER EST RSN (Exhibit B.1) on the LOC screen. The VID and LOC screens must be completed; however, all screens are available for entry. Enter "UPD" in NEXT SCREEN field to complete the BADD transaction. Create a folder with this command **ONLY WHEN** CEST or FNOD is not appropriate.

(1) If a near matching VID screen record or multiple records on the selection (NME or NUM) screen are displayed which do not belong to the veteran being processed, skip this screen by entering "ADD" in the NEXT SCREEN field. To review any record from the selection screen, enter "X" in front of the file number. Type "SEL" in NEXT SCREEN field on the VID screen being reviewed to return to the selection screen for review of another record.

(2) BIRLS will permit the operator to assign the Social Security number as the file number or request assignment of an eight-digit claim number. The Social Security number should be assigned as the file number unless the veteran does not have a Social Security number or there is a specific reason for requesting assignment of an eight-digit claim number.

(3) BADD will not permit regional offices to assign a specific eight-digit file number. If it is necessary to assign a specific eight-digit file number, contact the RPC BIRLS Adjustment Unit. (See par. 6.07.)

b. **The BFLD Command.** Use this command to request transfer or update the location of a particular folder to your station. (Use the BUPD command to request transfer of a DEA folder. See par. 4.12.) Ready Screen entries are BFLD, password, file number, and full name. Enter data on the LOC screen as required in paragraph 4.11b. If you wish to terminate this command before completion, type "END" in NEXT SCREEN field.

c. **The BINQ Command.** Use this command to review a BIRLS record. Ready Screen entries are BINQ, password, and any combination of available data to permit a search of the BIRLS system. Depending on the Ready Screen data

input, Target's reply may be "Can't Identify," "No Record," a single record or multiple records via a selection screen.

(1) All data fields are protected from entry during the BINQ command. Any BIRLS screen may be reviewed in any order by entering the screen name in the NEXT SCREEN field. Terminate processing by typing "END" in the NEXT SCREEN field.

(2) If no NEXT SCREEN entry is made, the system will continue through a sequence of screens until Target completes the transaction. See paragraph 6.04 for the sequence of screens. The BIRLS database search routines are explained in paragraph 6.06.

d. **The BPRT Command.** Use this command to print messages or review the count for any terminal digit range on the Message Management (BPR) screen. Ready Screen entries are "BPRT" and password. To print messages from the BPR screen, enter "X" before the message type (only one at a time), "X" before PRINT THE MESSAGES, station number after STA NO and the terminal digit range in the first field after TERMINAL DIGIT RANGE and THRU.

(1) **FOLDER REQUESTS.** FOLDER REQUESTS messages are requests for transfer from other stations. Print messages daily from the FOLDER REQUESTS category to receive a listing of files requested by other stations. The listing will furnish identifying information for the files requested as well as the station number and routing symbol of the requesting activity. Messages not printed daily will continue to be stored until they are printed or 5 days have elapsed. Unprinted messages are deleted after 5 days. Printed messages are moved from the FOLDER REQUESTS category to the FOLDER REQUESTS PENDING PRINTING category during overnight processing.

(2) **FOLDER REQUESTS PENDING PRINTING.** The printout generated by requesting this category is identical in format to the "FOLDER REQUESTS" printout. An individual transfer request will continue to appear on the FOLDER REQUESTS PENDING PRINTING listing until one of the following events occurs:

(a) An unavailable response (e.g., "No Record," "Charged Out") is entered into the system,

(b) The receiving station updates BIRLS to show that the folder has been received or

(c) 15 days have elapsed since the message was sent to the FOLDER REQUESTS PENDING PRINTING category.

(3) **FOLDER REQUESTS PAST DUE 15 DAYS.** After 15 days the message moves from FOLDER REQUESTS PENDING PRINTING to the FOLDER REQUESTS PAST DUE 15 DAYS category.

(4) **FOLDER REQUESTS PAST DUE 30 DAYS.** After another 15 days, the message moves from FOLDER REQUESTS PAST DUE 15 DAYS to FOLDER REQUESTS PAST DUE 30 DAYS.

(5) **FOLDER REQUESTS FROM FRC.** Certain regional offices are paired with certain FRC's and are responsible for printing FRC requests. See paragraph 4.11c. A separate tearsheet is generated for each recall request from a FRC. The tearsheet contains identifying information for the record requested as

well as the station number and routing symbol of the requesting activity. Requests for recall from an FRC are delivered to the appropriate FRC by the regional office which printed the recall request. This procedure is necessary because FRC's do not have Target terminals.

(6) **FOLDER REQUESTS RESPONSES.** Requesting the FOLDER REQUESTS RESPONSES category will produce a listing showing responses to requests for transfer-ins from other stations when the other station was unable to transfer the folder. The listing contains identifying information for the record requested and the reason why the folder could not be transferred. Possible responses are NO RECORD, CHARGED OUT TO_____ and FORWARD THE CLAIM TO_____. See paragraph 4.10i.

(7) **FLASH MESSAGES.** See paragraph 6.08 below.

(8) **NOTICE OF DEATH MESSAGES.** A Notice of Death message is generated when a date of death is added during FNOD processing and the claims file location in BIRLS is not that of the station processing the FNOD. For example, if a regional office processes an FNOD and the claims file is in RPC, a Notice of Death message will be generated at the regional office. Regional office printing of the Notice of Death messages is optional. Messages are saved for 5 days. If they have not been printed after 5 days, they are deleted from the system.

(9) **CONSOLIDATION MESSAGES.** If a veteran's file is consolidated via the DUPC command and a DEA file exists, a message is sent to the station with jurisdiction of the DEA file to advise it of the consolidation. The retained and canceled numbers are displayed.

(10) **MICROFILM REQUESTS.** See subparagraph i below.

(11) **MICROFILM RESPONSES.** See subparagraph j below.

e. **The BUPD Command.** Use this command to add, correct or delete data in a BIRLS record and to request or transfer a folder. Ready Screen entries are BUPD, password, the veteran's name and one or more identifying numbers. For a beneficiary, enter the beneficiary's name and payee number in addition to the veteran's file number (or other identifying numbers if the file number is unavailable).

(1) Update only one BIRLS record at a time. Enter UPD in NEXT SCREEN field to complete the transaction. If a record for update is selected from a selection screen (NME or NUM) and an entry to the record is made, it is not possible to return to the selection screen. If no entry is made on the selected record, type "SEL" in the NEXT SCREEN field to return to the selection screen to review another record.

(2) Delete data from any field by pressing the erase (EOF) key. If no data is reentered, the field will be displayed as blanks.

f. **The CEST Command.** Use this command to create pending issue files in Target. See paragraph 1.05 for more information on CEST procedures.

g. **The DUPC Command.** Use this command to consolidate two BIRLS records for a single veteran. See paragraph 3.16 for more information about DUPC processing.

h. **The FNOD Command.** Use this command to process a first notice of death when CEST processing is not appropriate. See chapter 5 for more information about FNOD processing.

i. **The MCRI Command.** Use this command to send a microfilm search request to RPC (376). The purpose of this command is to attempt to identify a veteran who cannot otherwise be identified in the BIRLS system with the available information.

(1) Send an MCRI request only if there is reason to believe the veteran had a record established in BIRLS at some time in the past. For example, a surviving spouse indicates that the veteran had filed a claim during his lifetime.

(2) Ready Screen entries are "MCRI" and password. When the system accepts the command and password, it will display the MRI screen. Enter the routing symbol to which RPC should direct its response. Then enter a name and one or more identifying numbers (claim, insurance or service) **OR** a name and a service date. The file number must not be a Social Security number and must be less than 27-593-410. The veteran's date of birth must be earlier than 1954 and the service entry date earlier than February 1, 1972.

(3) After the operator completes and enters the MRI screen, the system will display one of the following: a VID screen, "no record," or "cannot identify." The MCRI program initially attempts to locate an existing BIRLS record by performing a BINQ. (See subpar. c above.) If the BINQ locates a matching or near matching record, the record is displayed and the MCRI command is terminated. If no record is found, the microfilm search request is sent to RPC (376). An employee of RPC then searches microfilm records for information about the veteran.

(4) Only a "no record" response will result in transmission of a microfilm search request to the RPC. A "cannot identify" response will not initiate a microfilm search.

(5) Retrieve the results of the microfilm inquiry by using the BPRT command. (See subpar. d above.)

j. **The MCRO Command.** RPC (376) uses this command to respond to regional office MCRI requests. Ready Screen entries are MCRO and password. RPC enters the results of the microfilm search on the MRO screen. When the MRO screen is completed, a MICROFILM RESPONSE message is sent to be printed using the BPR screen at the requesting station. The RO must enter any new data into the veteran's BIRLS record via the BUPD command. In the event no BIRLS record was previously established for the veteran but a microfilm record was located by RPC, the RO must add the new BIRLS record via the BADD command. (See subpar. a above.)

k. **The RDEL Command.** (See exhibit A.16.) Central Office (101) and RPC (376) use this command to delete records from the system. "Canceled" records are assigned a different file number but "deleted" records are removed from the BIRLS system altogether. To delete a file number from the system, send an E-Mail message to "MAIL VBA RPC/BIRLS ADJ." Furnish the file number to be deleted, the name of the veteran and the payee number. Also furnish the name and phone number of a person the BIRLS Adjustment Unit can contact if there is a question.

6.04 OVERVIEW OF BIRLS SCREENS

a. BIRLS is programmed to proceed through a series of screens unless the transaction is terminated, completed or exited. The screens for a veteran are displayed in the following order: NME or NUM if multiple records are found, VID, INS, NAM, MSC, LOC, ICP. Beneficiary processing will only display BID and NAM (and possibly NME or NUM) screens. Unless the transaction process is shortened with a NEXT SCREEN field instruction entry (exhibit B.4), Target will continue through the standard sequence of screens until the PROCESSING COMPLETE screen appears.

b. Data entry fields have certain format restrictions. Acceptable format entries for specific BIRLS screens are shown in paragraph 6.05. Single-entry fields are updated with a Y, N or ERASE EOF (to delete an entry). Target displays Y entries as X, and input dates as MM-DD-CCYY (month, day, century and year).

c. Unless specifically limited, all fields may be updated by regional office input. BIRLS may also be updated through system interfaces with the Hines C&P system, VADS, Fee Basis, PAID, the CH 32 Bank System and the Insurance system. Note that the interface will not result in update of BIRLS unless a specific linkage has been established. For example, not all changes to the Hines C&P master record will automatically update BIRLS.

6.05 SPECIFIC USE OF BIRLS SCREENS

a. **The MNU Screen.** The BIRLS Menu screen lists all the BIRLS screens and allows selection of a particular BIRLS screen for review or data input. (See exhibit A.1.)

b. **The NME Screen.** The Name Only Selection screen is displayed if a veteran's or beneficiary's name is entered on the READY screen and the system finds more than one record but fewer than 16 records under that name. If the BIRLS search returns 16 or more names, a "cannot identify" response is given. Enter "X" beside the file number of the record to be reviewed. If no data entry input is made on the selected screen, it is possible to return to the selection screen by entering SEL in the NEXT SCREEN field. Terminate processing by either completing the transaction or entering "END" in the NEXT SCREEN field on any BIRLS screen. (See exhibit A.2.)

c. **The NUM Screen.** This is the Record Selection screen. It is displayed if a service number or Social Security number is entered on the READY screen and the system finds more than one record (but fewer than 15 records) under that number. Enter "X" beside the file number of the record to be reviewed. The processing is the same as for the NME screen in subparagraph b above. (See exhibit A.3.)

d. **The VID Screen.** The Veteran Identification Data screen displays veteran data and permits the updating of existing or missing data. The first three lines display data from the Ready Screen entries. (See exhibit A.4.) The following are the data format fields:

(1) **FILE NO.** Protected except during BUPD processing.

(2) **NAME.** Displays the last name, first name, middle initial, and a suffix. Name entries exceeding 20 letters in length are cut short. NAM

screen entries update this field.

(3) **ASSIGN FILE NO AS CLAIM OR SSN.** If a file number was not previously assigned, BIRLS will permit the operator to assign the veteran's Social Security number as the file number or request assignment of an eight-digit claim number. The Social Security number should be assigned as the file number unless the veteran does not have a Social Security number or there is a specific reason for requesting assignment of an eight-digit claim number. See paragraph 6.07.

(4) **CLAIMS FOLDER LOCATION.** Shows current claims folder location if a claims folder exists or the reason why no claims folder exists if there is none. See exhibit B.1. Review the LOC screen to determine the location of an NOD folder.

(5) **SSN.** Must be 9 digits and cannot begin with an 8 or 9. Enter all leading zeros.

(6) **VERIFIED SSN INDICATOR.** A one-position field to the left of the SSN field. Acceptable entries are Y, N or Blank. This field is updated by interface with the Hines C&P system which in turn interfaces with Social Security Administration records. It can also be updated by Central Office (101) or RPC (376).

(7) **DATE OF DEATH.** Enter MM-DD-CCYY if applicable.

(8) **INS FILE & POLICY NO.** Displays data from the INS screen.

(9) **CAUSE OF DEATH.** Possible entries are Unknown, Natural, Combat, or Other.

(10) **DEATH IN SERVICE.** Y, N, or Blank.

(11) **DATE OF BIRTH.** Enter MM-DD-CCYY.

(12) **POSITIVE INDICATION.** May be used by insurance centers to assign jurisdiction of NOD folders. Enter "X" and RO number.

(13) **SEX.** M(male), F(female), or Blank.

(14) **POWER OF ATTORNEY.** Enter the 3-digit numerical code. See exhibit B.5 for acceptable entries. Unless a service organization's POA code is in the system, its access to BIRLS is limited to the NAM screen, LOC screen and an abbreviated VID screen. Once a POA code is entered, personnel of the beneficiary's service organization have access to all BIRLS inquiry screens.

(15) **SERVICE NO(S).** Three entries up to 9 digits. If 9 digits are entered, service number must equal SSN. Service numbers are not unique.

NOTE: Service numbers do not necessarily correspond to the periods of service displayed below.

(16) **EOD.** Enter MM-DD-CCYY for 3 most recent periods of service.

(17) **RAD.** Enter MM-DD-CCYY for 3 most recent periods of service.

(18) **BRANCH OF SVC.** Enter branch of service code for each period of

service listed. See exhibit B.2 for valid entries.

(19) **CHARACTER OF SVC.** Possible entries are:

(a) **HON.** Honorable.

(b) **UHC.** Under Honorable Conditions (General Discharge).

(c) **OTH.** Under Other Than Honorable Conditions. May also appear on DD 214 as "Unsuitable" or "Bad Conduct" discharge.

(d) **DIS.** Dishonorable.

(e) **HVA.** Honorable for VA Purposes. Entered after a favorable administrative decision is made under part I, paragraph 14.34. Not shown on DD 214.

(f) **DVA.** Dishonorable for VA Purposes. Entered after an unfavorable administrative decision is made under part I, paragraph 14.34. Not shown on DD 214.

(20) **SEP RSN CODE.** Information in this field originally comes from the VADS interface. However, it can be updated by RO input. Possible entries are:

(a) **DEV.** Development may be required.

(b) **SAT.** Satisfactory.

(c) **ADM.** Administrative Decision (Used when Character of Service is HVA or DVA).

(d) **UNK.** Unknown.

(21) **PAY GRADE.** E1-E9 (X-X), W01-W04 (XX-X) or 01-010 (X-XX).

(22) **NON PAY DATES.** Enter the total number of days.

(23) **CONTESTED DATA.** Y, N or Blank. Central Office makes a positive entry if records that contain contested information are amended after a Privacy Act release. This field is not currently used.

(24) **DELETE RECORD.** Restricted to Central Office (101) or RPC (376) input.

(25) **VADS.** Y, N or Blank. A positive entry indicates that service data in the BIRLS system originally came from the VADS interface.

(26) **VERIFIED.** Y, N, U or Blank. If the veteran's file contains acceptable proof of service (e.g., an original DD 214, a 3101 response from the service department). VARO personnel shall verify and, if necessary, update the following fields: SSN, SERVICE NO, EOD, RAD, BRANCH OF SVC, CHARACTER OF SERVICE, and SEP RSN CODE. Include the three most recent periods of service. After verification and update, an employee with CADJ authority enters Y in the VERIFIED FIELD to set the field. Once the VERIFIED indicator is set, only an operator with CADJ authority can update the service data fields listed above.

e. **Using the VID Screen as acceptable evidence of service.**

(1) Use the BIRLS VID screen as evidence of service if **ALL** the following apply:

(a) Character of Service is HON or UHC.

(b) Separation Reason is SAT.

(c) There is a Y in the VADS field on the VID screen.

(d) The veteran's RAD is 9/1/75 or later.

(2) If there is no Y in the VADS field or the veteran's RAD is not 9/1/75 or later, the VID screen can still be used as proof of service if **ALL** the following apply:

(a) Character of Service is HON or UHC.

(b) Separation Reason is SAT.

(c) There is a Y in the VERIFIED field on the VID screen.

f. **The INS Screen.** The Insurance screen displays data for regional office review. The first two lines display data from the Ready Screen entries. Insurance and policy numbers show any insurance currently in effect. Only Central Office (101), Philadelphia IC (310), St. Paul IC (335), or RPC (376) can update this screen by entering "X" after ADD, MODIFY, DELETE, or CHANGE and the number after NO:. (See exhibit A.5.) Data fields are as follows:

(1) **INS NUMBER.** Displays code T, K, AN, N, V, H, RH, RS, or J and the number.

(2) **INSURANCE JURIS.** Displays either 310 (Philadelphia Insurance Center) or 335 (St. Paul Insurance Center).

(3) **POLICY NUMBER.** Displays code T, K, AN, N, V, H, RH, ARH, RS, RSW, W, J, JR, or JS and the number.

(4) **INSURANCE LAPSED/PURGED DATE.** Displays lapsed/purged date, if applicable.

g. **The NAM Screen.** The Name screen displays the current name and up to three alternates for a veteran or beneficiary in three 20-digit fields and one 3-digit suffix field. The first two lines display data from the Ready Screen entries. Update a name by entering "X" after ADD, DELETE, CHANGE or CORRECT and "X" before the NAME (CURRENT or ALTERNATE) to be changed. Enter the new name in the NAME fields at the bottom center of the screen. **The current name cannot be deleted.** (See exhibit A.6.)

h. **The MSC Screen.** The Miscellaneous Data screen displays various data pertaining to a veteran or allows the input of data to update a BIRLS record. (See exhibit A.7.) The first two lines display data from the Ready Screen entries. Update all single-digit fields with a Y, N, or Blank. The ERASE EOF key will delete an existing entry. The following are the data fields:

(1) **GUARDIANSHIP CASE.** May be updated by any regional office with jurisdiction of the PGF file, Central Office (101), or RPC (376).

(2) **VETERAN HAS BENEFICIARIES.** A "Y" is generated in this field when a beneficiary (CH 35) record is added to BIRLS. Field is protected except for Central Office (101) or RPC (376) input.

(3) **VETERAN IS A BENEFICIARY.** Indicates that the veteran is a beneficiary (e.g., the veteran also receives CH 35 benefits).

(4) **VA EMPLOYEE.** Indicates that the veteran is a VA employee. Updated by Central Office (101) or RPC (376). Also updated by interfaces with the following systems: PAID, C&P, CH 32 Banking, Fee Basis.

(5) **FLASH CODES.** See paragraph 6.08.

(a) **TYPE.** IA (101, 310, 335, 376 only), FB, SS, MV (101, 376 only), RR (101, 328, 376 only), or 01 (any station).

(b) **LOC.** Enter station number.

(c) **ROUTE.** Enter the mail routing symbol (up to 5 digits) to which the reply will be sent.

(6) **DISCLOSURE ACCOUNT NUMBERS.** Restricted to Central Office (101), RPC (376) and batch processing.

(7) **NUMBER OF DISCLOSURES.** Restricted to Central Office (101), RPC (376) and batch processing. The field is updated by one each time the record is released during special project extracts.

(8) **EMPLOYEE NUMBER.** Protected field which shows the employee number of the employee who processed the last BIRLS transaction.

(9) **UPDATE STATION.** Protected field which shows the station where the last BIRLS transaction was processed. If the last transaction involved BIRLS batch processing at the Austin DPC, station number 200 will appear in this field.

(10) **ACTIVATE CANCELED FILE NO.** Displays stored canceled file number. Can be used if a veteran whose file number was originally a 9-digit Social Security number filed for CH 31 and was assigned an 8-digit claim number, but now files for CH 32 and needs the 9-digit Social Security number restored as a file number. Updated by Central Office (101) or RPC (376) only.

(11) **PURPLE HEART.** Updated by VADS interface or RO input if the veteran received the Order of the Purple Heart medal.

(12) **MEDAL OF HONOR.** Updated by VADS interface or RO input if the veteran received the Medal of Honor.

(13) **REENLISTED.** Updated by VADS interface or RO input if the veteran served more than one term on active duty.

(14) **ACTIVE DUTY FOR TRAINING.** Updated by VADS interface or RO input if the veteran had active duty for training.

(15) **TRANSFERRED TO RESERVES.** Updated by VADS interface or RO input if the veteran was transferred to the Reserves.

(16) **INCOMPETENT.** Updated by any station with jurisdiction of the claims file, Central Office (101) or RPC (376).

(17) **VIETNAM SERVICE.** Updated by VADS interface or RO input if the veteran had Vietnam era service.

(18) **POW DAYS.** Enter total number of days as a prisoner of war.

(19) **DISABILITY.** Updated if veteran was released or discharged from service because of a disability.

(20) **DISAB SEV PAY.** Enter total dollars and cents (99999.99). Disability severance pay data comes from the VADS interface but can be updated by RO input.

(21) **LUMPSUM READJ PAY.** Enter total dollar and cents (99999.99). This information comes from the VADS interface but can be updated by RO input. See part I, paragraph 29.43b.

(22) **SEPARATION PAY.** Enter total dollars and cents (99999.99). This information comes from the VADS interface but can be updated by RO input.

(23) **TOTAL ACTIVE SVC.** Enter total time of service as YY-MM-DD. This information comes from the VADS interface but can be updated by RO input. This is **NOT** a date.

(24) **CH30/106.** Enter a "Y" for CH 30 or a "Y" for CH 106.

i. **The LOC Screen.** The Folder Management screen (exhibit A.8) controls up to eight folder types, provides FRC information, displays the status of records and is used for folder transfer procedures. (The BID screen tracks DEA folders.) The first two lines display data from the Ready Screen entries. This screen has multiple uses which are covered in other chapters. See chapter 2 for folder establishment procedures and chapter 4 for folder transfer procedures. Data format entries:

(1) **Folder Location Data.**

(a) **FLDR TYPE.** Displays the type of folder (claims, NOD, R&E, CER, CHR, PGF, LGY, CH30). Currently, only claims, NOD, R&E and CH30 folders are tracked. (See exhibit B.3.)

(b) **CURRENT LOCATION.** Displays the station number and name of regional office which has jurisdiction.

(c) **DESTROYED INDICATOR.** All folder types may be destroyed by entering a "Y" in this field. However, only stations 101 and 376 may destroy a claims or NOD folder. Other stations have the capability of destroying all other folder types if they have jurisdiction of the folder.

(d) **DATE OF TRANSFER.** Displays the date of transfer to the CURRENT LOCATION station. If there is no entry in the PRIOR LOCATION field, the date the folder was established is displayed.

(e) **PRIOR LOCATION.** Displays the station number of the former station of jurisdiction (if applicable).

(f) **IN TRANSIT TO STA DATE.** Displays the station number and transfer request date during a pending transfer. The file will remain "IN TRANSIT TO" until the receiving station makes a positive entry in the THE XXXX FOLDER IS LOCATED AT THIS STATION field. When the folder is received and BIRLS is updated, the IN TRANSIT TO station becomes the CURRENT LOCATION station.

NOTE: Stations 101 (Central Office) and 376 (RPC) are capable of entering data into all of the above-mentioned fields.

(2) **Benefit Indicators.** These fields are automatically updated via computer interface. The one-position field will be updated with a "Y" for active, or BLANK for not active.

(a)	**JOBS**	Veterans Job Training Act (VJTA) System.
(b)	**CH31**	Vocational Rehabilitation
(c)	CH32/903	Educational Benefits/Banking System, (BK=Banking/BT=Benefit), Section 903
(d)	**CH34**	Educational Benefits/CH 34
(e)	**901**	Section 901 (Armed Forces Educational Assistance Program)
(f)	**C&P**	Compensation and Pension

(3) **Folder Data.**

(a) **REBUILT.** Displays X when a claims folder is rebuilt. Updated by Central Office (101) or RPC (376).

(b) **NO CLAIM FOLDER EST RSN.** Displays the reason why a claims folder is not created. (See exhibit B.1.) Enter the code if a BIRLS record is added but a folder is not created. See paragraph 5.16 concerning entry of a NO CLAIM FOLDER EST RSN during FNOD processing. Delete this field with the ERASE EOF key if the respective folder type is created and a reason is shown.

(c) **ESTABLISH A [] FOLDER.** Used to create a folder. See paragraph 2.02.

(d) **FARC ACCESSION NO.** An entry is displayed in this field only for Group 2 XC-folders retired by the RPC to FRC (061), St. Louis, Missouri (See par. 5.18f). Data are displayed in format XXX-XX-XXXX. The first three digits are always "015," the NARA number for VA. The middle two digits are the fiscal year of the retirement. The last four digits are the NARA accession number. This field may only be updated by Central Office (101), RPC (376) or during mass folder retirements.

(e) **TRANSFER THE [] FOLDER TO [] ROUTING SYMBOL []**
THE [] FOLDER IS LOCATED AT THIS STATION
THE [] FOLDER IS UNAVAILABLE FOR TRANSFER:
CHARGED OUT TO [] FORWARD THE CLAIM TO [] NO RECORD. These fields

are used in connection with folder transfer procedures. See chapter 4.

(f) **Transaction Type 23 (TT23).** This is used to reactivate inactive Hines education master records or to update the station location in either the C&P or Education master record. TT 23 will make the Hines folder location equal BIRLS folder location. Folder location in the C&P Hines master record is also updated with a CORR transaction to the M11 screen.

j. **The ICP Screen.** Use the Inactive Comp and Pen Data screen (exhibit A.9) to review data for veterans who do not have active C&P master records. In July of 1987 the inactive C&P file was loaded into BIRLS as the basic source of ICP screen data. ICP screen data is updated whenever a terminated C&P master record is purged from the active file or when a claim is disallowed and there is no active master record.

NOTE: In 1989 it was determined that much ICP screen information about service-connected and nonservice-connected disabilities was wrong. Consequently, both automatic and manual updates of ICP screen data were suspended and users were advised not to rely on ICP screen disability data. The ICP screen is being modified to permit its future use as a source of information about service-connected and nonservice-connected disabilities. Until the modifications are complete, do not rely on ICP screen disability data and do not attempt to correct disability data on the ICP screen. Contact the Central Office Compensation and Pension Service (213B) for the current status of ICP screen modifications.

k. **The BEN Screen.** The Beneficiary Selection screen (exhibit A.10) is displayed as the result of a beneficiary name BIRLS search. Review any displayed record by entering "X" before the record. If no data entry input is made on the selected record, return to the selection screen by entering "SEL" in the NEXT SCREEN field. Terminate processing by either completing the transaction or entering "END" in the NEXT SCREEN field.

l. **The BID Screen.** The Beneficiary Identification Data screen (exhibit A.11) displays beneficiary data and allows the updating of existing or missing data. The first two lines display data from the Ready Screen entries.

(1) **Data format fields.**

(a) **NAME.** Displays a 36 character field for last, first, middle names and suffix. First and middle names are truncated if the full name exceeds 36 characters. Updated by any station.

(b) **SSN.** Must be 9 digits which cannot begin with 8 or 9. Enter all leading zeros.

(c) **DATE OF BIRTH.** Enter date as MM-DD-CCYY.

(d) **SEX.** M (male), F (female) or blank.

(e) **PAYEE NUMBER.** Enter payee number (10, 41-49) for DEA claimant.

(f) **BENEFICIARY IS A VETERAN.** Enter "Y" if beneficiary is a veteran.

(g) **DELETE RECORD.** Restricted to Central Office (101) or RPC (376) to delete the beneficiary record.

(h) **FOLDER LOCATION DATA.** All these fields are updated by FOLDER CONTROL FIELDS entries and are system generated.

(i) **FLDR TYPE.** Displays DEA.

(j) **CURRENT LOCATION.** Displays the station number and name of the regional office which has current jurisdiction.

(k) **DATE OF TRANSFER.** Displays the date of transfer to CURRENT LOCATION station.

(l) **PRIOR LOCATION.** Displays the former station of jurisdiction number.

(m) **IN TRANSIT TO STA DATE.** Displays the station number and transfer request date during a pending transfer request. The file will remain "IN TRANSIT TO" until the receiving station makes a positive entry in THE FOLDER IS LOCATED AT THIS STATION field. When the folder is received and BIRLS is updated, the IN TRANSIT TO station becomes the CURRENT LOCATION station.

(n) **DATE ELIGIBLE FOR RETIREMENT.** When a beneficiary record is initially established a date which is 2 years from the establishment date will appear in this field. This date will be deleted when an original award is processed.

(2) **Folder Control Fields.**

(a) To create a DEA folder, use ESTABLISH A DEA FOLDER. See paragraph 2.02c.

(b) Use the following fields for folder transfer procedures: See paragraph 4.12.

TRANSFER THE FOLDER TO [] ROUTING SYMBOL []
THE FOLDER IS LOCATED AT THIS STA
THE FOLDER IS UNAVAILABLE FOR TRANSFER:
CHARGED OUT TO [] FORWARD THE CLAIM TO [] NO RECORD

m. **The BPR Screen.** Use the Message Management screen to print messages or review the count for any terminal digit range. All 5-digit message count fields are protected from entry and display the number of pending messages. The remaining fields are data entry fields to request prints or for review of the pending count for each message field. (See exhibit A.12 and par. 6.03d.)

n. **The MRI Screen.** Use the Microfilm Inquiry screen to initiate a microfilm search to RPC (376). (See par. 6.03i and exhibit A.13.) All fields are data entry fields which are self explanatory. The only restricted data fields are:

(1) **FILE NUMBER.** Must not be an SSN and must be less than 27-593-410.

(2) **DATE OF BIRTH.** Must be earlier than 1954.

(3) **ENTERED ON DUTY.** Must be earlier than 02-01-1972.

o. **The MRO Screen.** RPC (376) uses the Microfilm Response screen for reply to regional office microfilm search requests. All fields are data entry fields which are self explanatory. (See exhibit A.14.)

p. **The CON Screen.** The Record Consolidation screen is completed during DUPC processing. (See par. 3.16 and exhibit A.15.) Enter the file numbers and names of the two records being consolidated exactly as shown in the existing BIRLS records.

6.06 BIRLS DATABASE SEARCH ROUTINES

a. **Primary Inquiry.** The primary inquiry locates either veteran or beneficiary records by searching the database using the basic identifying data entered. Basic identifying data is a number, a name or various combinations. Up to four identifying numbers can be entered (file number, SSN, insurance number, service number or any combination of name and service dates, dates of birth or death, branch of service, claims folder location or payee number). The three types of searches for a primary inquiry are number search, name search and extended search.

(1) **Number Search.** If the entry has an identifying number, a number search is performed. Up to four identifying numbers may be included in the transaction. The order of priority for number searches is: file number, SSN, insurance number and service number. A number search is conducted even if a name is included with input data.

(2) **Name Search.** A name search is conducted if a name with no identifying numbers is entered. Enter any available additional identifying data. If the transaction has additional identifying data, the order of importance is enlistment date, discharge date, date of death, date of birth, branch of service, claims folder location and payee number. See paragraph 6.05b.

(3) **Extended Search.** An extended search is conducted on transactions which fail to find a BIRLS record during the number search processing. This search is similar to a name search, except that a percentage match is performed on the input identifying numbers within a name group to try to identify the requested record. Near match records are displayed.

b. **Secondary Inquiry.** A secondary inquiry results when the operator selects an individual BIRLS record from a selection screen after multiple BIRLS records are displayed.

c. **Stub Name Inquiry.** If a CP&E interface transaction to BIRLS rejects, an NOE (Notice of Exception) message is generated for the regional office. This transaction allows the operator to try to identify the BIRLS record that the message pertains to by accepting a file number and stub name input. The results of the search will reflect a single BIRLS record, a BIRLS record with discrepant data, multiple abbreviated records, or a "No Record" response. Use this search only when attempting to identify a BIRLS record from an NOE message.

d. **BIRLS Inquiry Response.** The data input determines the type of search conducted. The types of record matches determine the response from BIRLS. The various types of responses are explained below.

(1) A single BIRLS record (either veteran or beneficiary) is returned when only one matching BIRLS record is identified, regardless of the type of search conducted.

(2) A multiple BIRLS record (selection screen) response is displayed if multiple records are found. If a number search identifies multiple records, the Record Selection (NUM) screen is displayed. If a name or extended search identifies multiple records, the Name Only Selection (NME) screen is displayed.

(3) A "No Record" message is displayed if the search fails to identify a record.

(4) A "Cannot Identify" message is displayed if a name search or extended search is conducted and more than 15 possible matches are found.

(5) A single BIRLS record with discrepant data is displayed if the search finds a BIRLS record using the input number, but the name does not match. The full BIRLS record is shown.

(6) A multiple abbreviated response results if any search finds two BIRLS records based on the input numbers. Both abbreviated records are displayed on the Ready Screen.

(7) A message, "System Error-Computer Malfunction," is displayed if a system error occurs. Contact Central Office Administrative Services Systems Staff if access to a BIRLS record is prevented by display of the "System Error-Computer Malfunction" message.

e. **Payee Number Input.** Responses are controlled by the payee number input. If the payee number is not entered, a multiple records response could include both veteran and beneficiary records. If the payee number input is 00, all responses are veterans' records. If the payee number input is 10 or 40 through 49, all responses are for beneficiary records only.

6.07 FILE NUMBER ASSIGNMENT

a. The file number is initially assigned as either an eight-digit claim number or a nine-digit SSN. Assign the veteran's SSN as the file number unless the veteran does not have an SSN or there are specific reasons for assigning an eight-digit claim number as the file number.

b. Only Central Office (101) and RPC (376) can assign a specific eight-digit file number, change one eight-digit file number to another eight-digit file number, change one nine-digit file number to another nine-digit file number, change an eight-digit file number to a nine-digit file number or change a nine-digit file number to an eight-digit file number (except during CH 31 CEST processing). If these types of changes are required, contact the RPC BIRLS Adjustment Unit. The E-Mail mailbox for the BIRLS Adjustment unit is "MAIL VBA RPC/BIRLS ADJ." In some cases the BIRLS Adjustment Unit will be unable to effect a change because there is a problem with the BIRLS record. If the BIRLS Adjustment Unit reports that it is unable to accomplish the desired change, contact the Central Office Administrative Service Systems Division.

6.08 FLASH CODE INDICATORS

a. Flash code indicators may be entered into the BIRLS system to trigger a message to a specific office when any activity occurs against a veteran's BIRLS record. Hines master record activity which does not interface with BIRLS will not trigger a message. Enter flash codes on the MSC screen (par. 6.05h) via any BIRLS input command which allows access to the MSC screen.

Retrieve flash code messages during BPRT processing.

b. A regional office will enter flash codes only with the Station Director's approval as expressed in a memorandum for file. Entry of flash codes is authorized for the following:

(1) Specific requests from the FBI, U.S. Secret Service, or Central Office elements.

(2) Cases in which veterans are reported missing.

(3) Any case in which the Director determines that special attention is warranted.

c. The flash codes are:

01 - Any station which enters the flash.
FB - Federal Bureau of Investigation, FBI.
SS - U.S. Secret Service (missing person).
MV - Office of Investigation, Central Office.
RR - Railroad Retirement.
IA - Insurance award.

d. Remove a flash code after all the information required by the flash is furnished or the flash is no longer necessary.

BIRLS MENU SCREEN

```
   MNU        BIRLS MENU SCREEN          SEQ NO XXXXXXXXXXXXXXX
XXXXXXXXXX
FILE NUMBER XXXXXXXXXXX    PN XX      NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
                                VETERAN SELECTIONS
X VETERAN IDENTIFICATION DATA, OR  (VID)  X VETERAN MISCELLANEOUS DATA   (MSC)
  BIRLS ADD SCREEN, OR                    X FOLDER MANAGEMENT DATA       (LOC)
  RECORD ESTABLISHMENT, OR                X INACTIVE COMPENSATION AND
  NOTICE OF DEATH                           PENSION DATA                 (ICP)
X INSURANCE                        (INS)
                             BENEFICIARY SELECTIONS
X BENE IDENTIFICATION DATA         (BID)
                           VET AND BENE SELECTIONS
X BIRLS NAME SCREEN                (NAM)  X RECORD SELECTION SCREEN, OR  (SEL)
X RESTORE TO ORIGINAL RECORD       (RES)    NAME ONLY SELECTION, OR
X UPDATE PROCESSING                (UPD)    BENE SELECTION SCREEN
X END PROCESSING                   (END)
                              INFORMATIONAL
  BIRLS MENU                       (MNU)    MICROFILM SEARCH             (MRI)
  RECORD CONSOLIDATION             (CON)    MICROFILM SEARCH RESPONSE    (MRO)
  RECORD DELETE                    (RDS)    PRESIDENTIAL MEMORIAL CERT   (PMC)
  MESSAGE MANAGEMENT               (BPR)    BIRLS ADD FROM SELECTION     (ADD)
```

Exhibit A.1

Exhibit A (CONT)

NAME ONLY SELECTION SCREEN

```
NME                    NAME ONLY SELECTION   SEQ NO XXXXXXXXXXXXXXXX   XXXXXXXXXX
NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

  FILE NUMBER    SOC SEC NUM     SVC NO    PN  DOB    DOD     EOD    RAD   BRANCH LOC
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX
X XXXXXXXXXXX X XXXXXXXXXXX   XXXXXXXXX   XX XXXXX XXXXX  XXXXX XXXXX  XXXX   XXX

                                                              NEXT SCREEN XXX
```

Exhibit A.2

RECORD SELECTION SCREEN

```
NUM            RECORD SELECTION SCREEN   SEQ NO XXXXXXXXXXXXXXXX   XX-XX-XXXX
FILE NUMBER XXXXXXXXXXX    PN XX     NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
SOC SEC NO XXXXXXXXXXX      INSURANCE NO XXXXXXXXXXX      SERVICE NO XXXXXXXXX
STUB NAME XXXXXXXXX           BRANCH OF SERVICE XXXX            LOCATION XXX
DOB XXXXXXXXXX       DOD XXXXXXXXXX       EOD XXXXXXXXXX        RAD XXXXXXXXXX
                              RECORDS FOUND
                NAME                      FILE NO   PN LOC  EOD   RAD   DOB   DOD
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
X XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX XX XXX XX-XX XX-XX XX-XX XX-XX
                                                          NEXT SCREEN XXX
```

Exhibit A.3

Exhibit A (CONT)

VID SCREEN

```
VID          XXXXXXXXXXXXXXXXXXXXXXXXXXXX   SEQ NO XXXXXXXXXXXXXXXX   XXXXXXXXXX
FILE NO XXXXXXXXXXX  PN XX  BR XXXX  NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
SSN XXXXXXXXXXX   INS NO XXXXXXXXXXXX  SVC NO XXXXXXXXX    STUB NAME XXXXXXXXX

FILE NO XXXXXXXXXXX   PAYEE NO XX    NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
ASSIGN FILE NO AS X CLAIM OR X SSN   CLAIM FOLDER LOCATION XXX XXXXXXXX
SOCIAL SECURITY NO    X XXXXXXXXXXX  DATE OF DEATH          XXXXXXXXXX
INSURANCE FILE NO      XXXXXXXXXXX  CAUSE OF DEATH         XXXXXXX
INSURANCE POLICY NO    XXXXXXXXXXXX DEATH IN SVC           X
DATE OF BIRTH          XXXXXXXXXX   POSITIVE INDICATION    X XXX
SEX                    X            POWER OF ATTORNEY      XXX
SERVICE NO(S)           XXXXXXXXX            XXXXXXXXX            XXXXXXXXX
EOD                     XXXXXXXXXX           XXXXXXXXXX           XXXXXXXXXX
RAD                     XXXXXXXXXX           XXXXXXXXXX           XXXXXXXXXX
BRANCH OF SVC             XXXX                 XXXX                 XXXX
CHARACTER OF SVC          XXX                  XXX                  XXX
SEP REASON CODE           XXX                  XXX                  XXX
PAY GRADE                 XXXX                 XXXX                 XXXX
NON-PAY DAYS              XXX                  XXX                  XXX

CONTESTED DATA X     DELETE RECORD X     VADS X     VERIFIED X
                                                    NEXT SCREEN XXX
```

EXHIBIT A.4

INSURANCE SCREEN

```
INS          INSURANCE SCREEN          SEQ NO XXXXXXXXXXXXXXX          XXXXXXXXXX
FILE NUMBER XXXXXXXXXXX                NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

INSURANCE NUMBER XXX XXXXXXXX          INSURANCE JURIS XXX XXXXXXXX

POLICY NUMBERS:
                X XXXXXXXXXXXX                    X XXXXXXXXXXXX
                X XXXXXXXXXXXX                    X XXXXXXXXXXXX
                X XXXXXXXXXXXX                    X XXXXXXXXXXXX
                X XXXXXXXXXXXX                    X XXXXXXXXXXXX
                X XXXXXXXXXXXX                    X XXXXXXXXXXXX

ADD X          MODIFY X          DELETE X       NO: XXX XXXXXXXX

INSURANCE LAPSED/PURGED DATE XXXXXX

                                                  NEXT SCREEN XXX
```

Exhibit A.5

Exhibit A (CONT)

NAME SCREEN

```
NAM          NAME SCREEN           SEQ NO XXXXXXXXXXXXXXX          XXXXXXXXXX
FILE NUMBER XXXXXXXXXXX   PAYEE XX   NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

ADD  X             CHANGE (RETAINS OLD AND NEW NAME)  X
DELETE  X          CORRECT (CHANGES OLD NAME)  X

CURRENT NAME:
          FIRST                  MIDDLE                  LAST          SUFFIX
X  XXXXXXXXXXXXXXXXXXX   XXXXXXXXXXXXXXXXXXX   XXXXXXXXXXXXXXXXXXX    XXX

ALTERNATE NAME:
X  XXXXXXXXXXXXXXXXXXX   XXXXXXXXXXXXXXXXXXX   XXXXXXXXXXXXXXXXXXX    XXX

X  XXXXXXXXXXXXXXXXXXX   XXXXXXXXXXXXXXXXXXX   XXXXXXXXXXXXXXXXXXX    XXX

X  XXXXXXXXXXXXXXXXXXX   XXXXXXXXXXXXXXXXXXX   XXXXXXXXXXXXXXXXXXX    XXX

                    FIRST   XXXXXXXXXXXXXXXXXXX
                    MIDDLE  XXXXXXXXXXXXXXXXXXX
                    LAST    XXXXXXXXXXXXXXXXXXX
                    SUFFIX  XXX

                                                    NEXT SCREEN XXX
```

Exhibit A.6

MSC SCREEN

```
MSC                    MISCELLANEOUS DATA   SEQ NO XXXXXXXXXXXXXXXX   XXXXXXXXXX
FILE NUMBER XXXXXXXXXXX     PN XX      NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
GUARDIANSHIP CASE             X                PURPLE HEART                    X
VETERAN HAS BENEFICIARIES     X                MEDAL OF HONOR                  X
VETERAN IS A BENEFICIARY      X                REENLISTED                      X
VA EMPLOYEE                   X                ACTIVE DUTY FOR TRAINING        X
          FLASH CODES                          TRANSFERRED TO RESERVES         X
TYPE LOC ROUTE  TYPE LOC ROUTE                 INCOMPETENT                     X
 XX  XXX XXXXX   XX  XXX XXXXX                 VIETNAM SERVICE                 X
 XX  XXX XXXXX   XX  XXX XXXXX                 PRISONER OF WAR DAYS         XXXX
                                               DISABILITY                      X
  DISCLOSURE ACCOUNT NUMBERS                   DISABILITY SEVERANCE PAY XXXXXXXX
XXXX XXXX XXXX XXXX XXXX XXXX                  LUMPSUM READJUSTMENT PAY XXXXXXXX
XXXX XXXX XXXX XXXX XXXX XXXX                  SEPARATION PAY           XXXXXXXX
NUMBER OF DISCLOSURES      XX                  TOTAL ACTIVE SERVICE     XXXXXXXX
EMPLOYEE NUMBER          XXXX
UPDATE STATION            XXX                  CH30 X
DATE LAST UPDATED  XXXXXXXXXX                  106  X

ACTIVATE CANCELLED FILE NO XXXXXXXXXXX

                                                          NEXT SCREEN XXX
```

Exhibit A.7

Exhibit A (CONT)

LOC SCREEN

```
LOC                    FOLDER MANAGEMENT   SEQ NO XXXXXXXXXXXXXXXX   XXXXXXXXXX
FILE NUMBER XXXXXXXXXXX     PN XX      NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
                              FOLDER LOCATION DATA
        FLDR       CURRENT       DES  DATE OF       PRIOR     IN TRANSIT TO
        TYPE      LOCATION             TRANSFER    LOCATION    STA   DATE
        XXXXX  XXX XXXXXXXX      X    XXXXXXXX       XXX      XXX  XXXXXXXX
        XXXXX  XXX XXXXXXXX      X    XXXXXXXX       XXX      XXX  XXXXXXXX
        XXXXX  XXX XXXXXXXX      X    XXXXXXXX       XXX      XXX  XXXXXXXX
        XXXXX  XXX XXXXXXXX      X    XXXXXXXX       XXX      XXX  XXXXXXXX
        XXXXX  XXX XXXXXXXX      X    XXXXXXXX       XXX      XXX  XXXXXXXX
        XXXXX  XXX XXXXXXXX      X    XXXXXXXX       XXX      XXX  XXXXXXXX
        XXXXX  XXX XXXXXXXX      X    XXXXXXXX       XXX      XXX  XXXXXXXX
        XXXXX  XXX XXXXXXXX      X    XXXXXXXX       XXX      XXX  XXXXXXXX
CH31 X        CH32/903 X       CH34 X      901 X       C&P X        JOBS X
              BK X BT X
XXXXX FOLDER DATA:  REBUILT X  NO CLAIM FOLDER EST RSN XXX
 X ESTABLISH A XXXXX FOLDER    FARC ACCESSION NO XXXXXXXXXXX
 X TRANSFER THE XXXXX FOLDER TO XXX ROUTING SYMBOL XXXXXXXX  TT23 X
 X THE XXXXX FOLDER IS LOCATED AT THIS STATION
 X THE XXXXX FOLDER IS UNAVAILABLE FOR TRANSFER:
  CHARGED OUT TO XXXXXXXX   FORWARD THE CLAIM TO XXXXXXXX   NO RECORD X
                                                             NEXT SCREEN XXX
```

Exhibit A.8

ICP SCREEN

```
ICP          INACTIVE COMP AND PEN DATA   SEQ NO XXXXXXXXXXXXXXXX   XXXXXXXXXX
FILE NUMBER XXXXXXXXXXX    PN XX     NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

                                                    SERVICE
                                                DIAGNOSTICS AND PERCENT
BURIAL FLAG ISSUED   X                              XXXX          XXX
APPLICATION FOR PLOT X                              XXXX          XXX
BURIAL AWARD SVC CON X    NON-SVC CON X             XXXX          XXX
BURIAL AWARD TRANSP  X    HEADSTONE   X             XXXX          XXX
BURIAL AWARD PLOT    X    PAYMENT     X             XXXX          XXX
CLOTHING ALLOWANCE   X                              XXXX          XXX
AUTOMOBILE ALLOWANCE X                              XXXX          XXX
ADAPTIVE EQUIPMENT   X                          NUM OF SVC CON DIAGS X
SPECIAL ADAPTIVE HOUSING X
REASON FOR TERMINATION OR DISALLOWANCE XX       ENTITLEMENT CODE   XX
EFFECTIVE DATE OF TERMINATION XXXXXXXXXX        SPECIAL LAW CODE   XX
```

Note: This screen is being redesigned. See par. 6.05j.

NEXT SCREEN XXX

Exhibit A.9

Exhibit A (CONT)

BENEFICIARY SELECTION SCREEN

```
BEN              BENEFICIARY SELECTION   SEQ NO XXXXXXXXXXXXXXX   XXXXXXXXXX
FILE NUMBER XXXXXXXXXX      VETERAN NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

            BENEFICIARY NAME                PN   SOC SEC NUM      DOB        LOC
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX
X   XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX   XX   XXXXXXXXXXX   XXXXXXXXXX   XXX

                                                        NEXT SCREEN XXX
```

Exhibit A.10

BID SCREEN

```
BID     BENEFICIARY IDENTIFICATION DATA   SEQ NO XXXXXXXXXXXXXXX   XXXXXXXXXX
FILE NUMBER XXXXXXXXXX    PN XX     NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
SOCIAL SECURITY NUMBER  XXXXXXXXXX          PAYEE NUMBER              XX
DATE OF BIRTH           XXXXXXXXXX          BENEFICIARY IS A VETERAN  X
SEX                     X                   DELETE RECORD             X

                              FOLDER LOCATION DATA
   FLDR      CURRENT     DATE OF      PRIOR     IN TRANSIT TO    DATE ELIGIBLE
   TYPE      LOCATION    TRANSFER   LOCATION   STA    DATE      FOR RETIREMENT
   XXXXX  XXX XXXXXXXX   XXXXXXXX     XXX      XXX  XXXXXXXX     XXXXXXXX

                              FOLDER CONTROL FIELDS
X ESTABLISH A DEA FOLDER          DEA FOLDER IS DESTROYED X   REBUILT X
X TRANSFER THE FOLDER TO XXX ROUTING SYMBOL  XXXXXXXX
X THE FOLDER IS LOCATED AT THIS STATION
X THE FOLDER IS UNAVAILABLE FOR TRANSFER: CHARGED OUT TO XXXXXXXX
  FORWARD THE CLAIM TO XXXXXXXX    NO RECORD X

                                                        NEXT SCREEN XXX
```

Exhibit A.11

Exhibit A (CONT)

BPR SCREEN

```
BPR                    MESSAGE MANAGEMENT                    XXXXXXXXXX

                    FOLDER TRANSFER MESSAGES
X FOLDER REQUESTS PENDING PRINTING    XXXXX
X FOLDER REQUESTS FROM FARC           XXXXX
X FOLDER REQUESTS RESPONSES           XXXXX
X FOLDER REQUESTS                     XXXXX
X FOLDER REQUESTS PAST DUE 15 DAYS    XXXXX
X FOLDER REQUESTS PAST DUE 30 DAYS    XXXXX

                      BIRLS MESSAGES
X FLASH MESSAGES                      XXXXX
X NOTICE OF DEATH MESSAGES            XXXXX
X CONSOLIDATION MESSAGES              XXXXX

                    MICROFILM MESSAGES
X MICROFILM REQUESTS                  XXXXX
X MICROFILM RESPONSES                 XXXXX

X PRINT THE MESSAGES      STA NO XXX
TERMINAL DIGIT RANGE XX XX THRU XX XX   XXXXX  X
                                        NEXT SCREEN XXX
```

Exhibit A.12

MRI SCREEN

```
MRI                          MICROFILM INQUIRY                    XXXXXXXXXX

ROUTING SYMBOL XXXXXXXXXX


NAME:
  FIRST  XXXXXXXXXXXXXXXXXXX
  MIDDLE XXXXXXXXXXXXXXXXXXX
  LAST   XXXXXXXXXXXXXXXXXXX
  SUFFIX XXX
FILE NUMBER              XXXXXXXXXXX     PN XX
SOCIAL SECURITY NUMBER   XXXXXXXXXXX
INSURANCE NUMBER         XXX XXXXXXXX
DATE OF BIRTH            XXXXXXXXXX
DATE OF DEATH            XXXXXXXXXX
SERVICE NUMBER           XXXXXXXXX
ENTERED ON DUTY          XXXXXXXXXX
RELEASED FROM DUTY       XXXXXXXXXX
BRANCH OF SERVICE        XXXX


                                                  NEXT SCREEN XXX
```

Exhibit A.13

Exhibit A (CONT)

MRO SCREEN

```
MRO                          MICROFILM RESPONSE                    XXXXXXXXXX
MICROFILM DIARY NUMBER  XXXXXXXXX
ROUTING SYMBOL          XXXXXXXXXX          NAME:
NO RECORD               X                     FIRST   XXXXXXXXXXXXXXXXXXXX
                                              MIDDLE  XXXXXXXXXXXXXXXXXXXX
                                              LAST    XXXXXXXXXXXXXXXXXXXX
                                              SUFFIX  XXX

FILE NUMBER             XXXXXXXXXXX   PN XX
SOCIAL SECURITY NUMBER  XXXXXXXXXXX
INSURANCE NUMBER        XXX XXXXXXXX
DATE OF BIRTH           XXXXXXXXXX
DATE OF DEATH           XXXXXXXXXX
SERVICE NUMBER(S)       XXXXXXXXX       XXXXXXXXX       XXXXXXXXX
ENTERED ON ACTIVE DUTY  XXXXXXXXXX      XXXXXXXXXX      XXXXXXXXXX
RELEASED FROM ACTIVE DUTY XXXXXXXXXX    XXXXXXXXXX      XXXXXXXXXX
BRANCH OF SERVICE         XXXX            XXXX            XXXX
CHARACTER OF SERVICE      XXX             XXX             XXX
SEPARATION REASON CODE    XXX             XXX             XXX
PAY GRADE                 XXXX            XXXX            XXXX
MISCELLANEOUS:XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
                                                          NEXT SCREEN XXX
```

Exhibit A.14

CON SCREEN

```
CON              RECORD CONSOLIDATION                    XXXXXXXXXX

                     RECORD TO BE RETAINED

FILE NUMBER XXXXXXXXXX
NAME
 FIRST  XXXXXXXXXXXXXXXXXXX
 MIDDLE XXXXXXXXXXXXXXXXXXX
 LAST   XXXXXXXXXXXXXXXXXXX
 SUFFIX XXX


                     RECORD TO BE CANCELED

FILE NUMBER XXXXXXXXXX
NAME
 FIRST  XXXXXXXXXXXXXXXXXXX
 MIDDLE XXXXXXXXXXXXXXXXXXX
 LAST   XXXXXXXXXXXXXXXXXXX
 SUFFIX XXX

                                              NEXT SCREEN XXX
```

Exhibit A.15

Exhibit A (CONT)

RECORD DELETE SCREEN

```
RDS                        DELETE RESPONSE   SEQ NO XXXXXXXXXXXXXXXX   XXXXXXXXXX
FILE NUMBER XXXXXXXXXXX     PN XX      NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
SOC SEC NO X XXXXXXXXXXX
       ADDITIONAL NAME RECORDS          PN     INS NO     CAN. FILE NO   SVC NO
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  XX  XXXXXXXXXXX    XXXXXXXXX   XXXXXXXXX
```

Exhibit B

NO FOLDER ESTABLISHED REASONS

DMA - Department of Memorial Affairs
LGY - Loan Guaranty
VAD - Veterans Assistance Discharge System
INS - Insurance
ROI - Regional Office Input
C32 - Chapter 32 System
SYS - System generated

Listed in order of priority. A higher priority reason may not be changed to a lower priority reason.

Exhibit B.1

BRANCH OF SERVICE CODES

Branch of Service	Valid Entries
Army	Army, A
Navy	Navy, N, B
Marine Corps	M, C
Coast Guard	CG, D
US Public Health Svc.	PHS, E
Air Force	AF, F
Regular Philippine Scouts	RPS,
Women's Army Corps	WAC,
Coast & Geodetic Survey National Oceanic & Atmospheric Admin.	NOAA, I
Army Air Corps	AAC,
Special Philippine Scouts	SPS,
Commonwealth Army	CA,
Guerrilla & Combination Service	GCS,
Regular Scout Service Combined with Special Philippine Scout or Commonwealth Army Service	RSS,
Merchant Marine	MM

Exhibit B.2

FOLDER TYPE CODES

Folder type entries:

CLAIM - Claim folder (C&P, CH34, CH32, Section 106)
NOD - Notice of death folder
DEA - DEA folder (appears on the BID screen)
R&E - Chapter 31 rehabilitation folder
CER - Counseling education rehabilitation folder
CHR - Consolidated health record
PGF - Parent guardianship folder
LGY - Loan guaranty folder
CH30 - Chapter 30 folder

Exhibit B.3

NEXT SCREEN ENTRIES

Next Screen field entries:

END - terminates the transaction.
SEL - returns to the selection screen.
ADD - adds a record to the BIRLS system.
RES - restores original data to the screens after entries are made but before UPD completed. Do not use with the DUPC command.
UPD - updates the data entered into the system.
XXX - any BIRLS screen name will take you to that particular screen.

Exhibit B.4

POWER OF ATTORNEY CODES

National Organizations

Code	Name
000	No Power of Attorney assigned
003	Polish Legion of American Veterans, USA
007	Retired Enlisted Association
011	Congressional Medal of Honor Society
012	Gold Star Wives
024	National Amputation Foundation
026	Seattle Veterans Action Center
029	Vietnam Era Veterans Association
043	Swords to Plowshares
061	American Defenders of Bataan and Corregidor
062	Noncommissioned Officers Association of United States of America
064	Economic Opportunity Military Justice Clinic
065	American Ex-Prisoners of War
068	American GI Forum, National Veterans' Outreach Program
069	United Vietnam Veterans Organization
070	Vietnam Veterans of America
071	Paralyzed Veterans of America
074	The American Legion
075	The American Red Cross
076	American Veterans Committee
077	AMVETS
078	Army Mutual Aid Association
079	Army and Navy Union, U.S.A.
080	Blinded Veterans Association
081	Catholic War Veterans of the U.S.A.
082	Coast Guard League
083	Disabled American Veterans
084	Disabled Officers Association
085	Fleet Reserve Association
086	Jewish War Veterans of the United States
087	Legion of Valor of the United States of America
088	Marine Corps League
089	Military Order of the Purple Heart
090	Military Order of World Wars
091	National Jewish Welfare Board
092	The National Tribune
093	Navy Mutual Aid Association
094	Regular Veterans Association
095	United Indian War Veterans, U.S.A.
096	United Spanish War Veterans
097	Veterans of Foreign Wars of the United States
098	Veterans of WWI of the U.S.A., INC.

Exhibit B (CONT)

POWER OF ATTORNEY CODES (CONT)

State Organizations

Code	State	Name
022	Alabama	Department of Veterans Affairs
067	American Somoa	Veterans Affairs Office
045	Arizona	Veterans Service Commission
050	Arkansas	Department of Veterans Affairs
044	California	Department of Veterans Affairs
039	Colorado	Department of Social Services
008	Connecticut	Soldiers, Sailors, and Marines Fund
072	District of Columbia	Department of Veterans Affairs
017	Florida	Division of Veterans Affairs
016	Georgia	Department of Veterans Service
066	Guam	Veterans Affairs Office
059	Hawaii	Department of Social Services
047	Idaho	Veterans Affairs
028	Illinois	Department of Veterans Affairs
052	Kansas	Veterans Commission
027	Kentucky	Center for Veterans Affairs
021	Louisiana	Department of Veterans Affairs
002	Maine	Department of Veterans Services
013	Maryland	Veterans Service Commission
001	Massachusetts	Office of Commissioners of Veterans' Services
035	Minnesota	Department of Veterans Affairs
023	Mississippi	Veterans Affairs Commission
031	Missouri	Division of Veterans Affairs
036	Montana	Veterans Affairs Division
034	Nebraska	Department of Veterans Affairs
054	Nevada	Commissioner of Veterans Affairs
073	New Hampshire	State Veterans Council
009	New Jersey	Division of Veterans Services
040	New Mexico	Veterans Service Commission
006	New York	Division of Veterans Affairs
018	North Carolina	Division of Veterans Affairs
037	North Dakota	Department of Veterans Affairs
025	Ohio	Department of Veterans Affairs
051	Oklahoma	Department of Veterans Affairs
048	Oregon	Department of Veterans Affairs
010	Pennsylvania	Department of Military Affairs
055	Puerto Rico	Department of Labor, Veterans Office
004	Rhode Island	Veterans Affairs
019	South Carolina	Department of Veterans Affairs

Exhibit B.5 (Cont)

POWER OF ATTORNEY CODES (CONT)

State Organizations (Cont)

Code	State	Name
038	South Dakota	Department of Veterans Affairs
020	Tennessee	Division of Veterans Affairs
049	Texas	Veterans Affairs Commission
041	Utah	Office of Veterans Services
005	Vermont	Veterans Affairs Section, Military
014	Virginia	Division of War Veterans' Claims
046	Washington	Department of Veterans Services
015	West Virginia	Department of Veterans Affairs
030	Wisconsin	Department of Veterans Affairs
099		Agent

CHAPTER 7. VETERANS APPEALS RECORDS MANAGEMENT SUBSYSTEM (VARMS)

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CHAPTER 7. VETERANS APPEALS RECORDS MANAGEMENT SUBSYSTEM (VARMS)

7.01 GENERAL

a. Veterans Benefits Administration (VBA) regional offices and centers are required to maintain records and prepare reports on veterans' appeals arising from determinations made under their jurisdictions. Procedures outlined in this chapter govern the controlling and processing of appeals through VARMS from the receipt of the notice of disagreement through final disposition.

b. The VARMS on-line system is used to maintain appeal records. Access the system via the Target Video Display Terminals (VDT) located in all VBA field stations. The master file for each claimant submitting a notice of disagreement contains permanent dates for the receipt of the notice of disagreement, the date the statement of the case is mailed, the date the substantive appeal is received from the claimant, the date the case is forwarded to the Board of Veterans Appeals (BVA), the date the case is remanded by BVA (if applicable), and the date the case is closed. For every appeal, the master file also reflects a file number, payee number, station number, end product code, stub name, responsible operating element, and the date and type of last action. The system allows each station access to pending cases through WIPP (Work in Process) as well as producing reports for BVA.

c. Effective tracking of appeals through WIPP requires updating of the VARM screen (VAR) whenever Adjudication Division or Vocational Rehabilitation and Counseling (VR&C) Division personnel take action on pending appeals. The WIPP screen (W70) shows the operating element, file number, stub name of veteran, insurance or loan number, date notice of disagreement was received, date case was remanded by BVA (if applicable), current status and date, as well as future suspense date.

7.02 DEFINITIONS

a. **Notice of Disagreement.** A notice of disagreement is any written communication from a claimant or his or her representative, timely filed (see pt. I, par. 18.04), which expresses disagreement with an appealable decision.

b. **Statement of the Case.** A statement of the case is a concise summary of all pertinent evidence used by VA in arriving at a decision. It details the issues involved and the reason for the decision, setting forth the laws and regulations which support it. The purpose is to provide the claimant with sufficient information to understand the basis for the determination. The claimant may then decide whether to accept the previous decision or prepare an effective substantive appeal. A statement of the case is prepared by the appropriate operating element of the originating office in response to a notice of disagreement.

c. **Supplemental Statement of the Case.** If, after release of the statement of the case, additional evidence is received prior to forwarding the records to BVA, the claim will be subject to reconsideration. If this new evidence does not resolve the previous disagreement, a supplemental

statement is prepared and sent to the claimant.

d. **Substantive Appeal.** A substantive appeal is the claimant's response to the statement of the case. It reflects continued disagreement with the decision and a desire for review by BVA. It may be submitted by either the claimant or his or her representative.

e. **Certification of the Appeal.** When all required claimant and regional office action on an appeal is completed, it is certified as ready for BVA review by completing VA Form 1-8, Certification of Appeal. The form identifies the issues being appealed and serves as a checklist to asssure that due process has been accorded the claimant.

f. **Remand.** A remand is an appeal returned from BVA to the regional office for correction or further development of the issues. Remanded appeals must be controlled, and action must be completed as quickly as possible.

7.03 INITIAL PROCESSING OF THE NOTICE OF DISAGREEMENT

a. Correspondence received from a claimant or his or her representative expressing dissatisfaction with an appealable adjudicative determination constitutes a notice of disagreement. Refer the correspondence, attached to the veteran's or beneficiary's records, to the operating element responsible for the decision being appealed.

b. If the operating element is either the Adjudication Division or the VR&C Division, establish a Target VARMS control using the PEST or CEST command. All other operating elements use the VARM command to access the VAR screen and establish an automated control.

c. Upon receipt of a notice of disagreement concerning a decision by a medical facility within its jurisdiction, Adjudication Division personnel may establish a VARMS record using the VARM command.

d. The correspondence accepted as the notice of disagreement will be stamped in the lower right corner as follows:

Notice of Disagreement

Recorded _____

(Date)

7.04 THE VARMS COORDINATOR

a. Each field station has a VARMS coordinator designated in writing by station management. The VARMS coordinator is responsible for maintaining VARMS in a current status. The coordinator is also responsible for obtaining and disseminating the detailed W70 WIPP listings to the adjudication units, VR&C, Finance, Loan Guaranty and Insurance operating elements.

b. W70 screen listings are the primary control document for appeal records. Division management maintains a file containing monthly detailed listings from the VARMS W70 screen. The file is reviewed and annotated

each month to ensure status code correctness, updating timeliness and overall appeal responsiveness. The VARMS coordinator must ensure that each appeal case is controlled and that it is pulled for review when the suspense diary matures. Responsibilities for reviewing the W70 screen listings and identifying any overdue suspenses should be specified in the station WIPP User Plan. (See M21-4, ch. 4.) Special attention must be given to appeal cases having delinquent suspense dates.

7.05 PROCESSING APPEALS

a. **Establishment of Appeal Record.** To establish an automated appeal record in VARMS or to access an existing one to update it, complete a READY screen. Adjudication and VR&C employees use either the CEST command (initially to establish an appeal record) or PEST command (if updating an existing record) to access the VARMS (VAR) screen. All other operating elements use the VARM command to access the VAR screen.

b. **Completion of the READY Screen.** The minimum READY screen entries for establishing an automated appeal record are: Command, password, file number, end product code, benefit, and the veteran's stub name (if using the VARM or PEST commands), or the veteran's full name (if using the CEST command). See figures 7.01 and 7.02.

(1) **COMMAND.** Use one of the commands **CEST, PEST or VARM,** depending on the operating element whose decision is being appealed. (See pars. 7.03 and 7.05 for further information on the proper command.)

(2) **FILE NUMBER.** Enter the veteran's file number. All appeals are tracked under the veteran's name and claim number.

(3) **PAYEE NUMBER.** Enter the appropriate two-digit payee number for the claimant filing the appeal. (See MP-6, part IV, supplement No. 1.1., par. 201.03b.) If the appeal is filed on an insurance issue, enter the appropriate payee number from M29-1, part VI, ch. 5. If it is less than two digits, enter a leading zero.

(4) **END PRODUCT CODE.** Enter 030. Additional appeals filed with the same file number and payee number will be incremented by one for each additional appeal, e.g., 031, 032.

(5) **BENEFIT.** Enter VARM. The benefit type is VARM in all cases.

(6) **STUB NAME.** Enter the first initial, middle initial, if any, and the first five letters of the **veteran's** surname. All appeals are tracked under the veteran's name and file number. If the last name is less than five letters, enter only those letters. If establishing an appeal record using the CEST command, the stub name may be omitted because the veteran's full name is required.

```
COMMAND              CEST  XXXX

SCREEN NUMBER
FILE NUMBER          987654321
PAYEE NUMBER         00
END PRODUCT CODE     030
BENEFIT              VARM
STUB NAME
FULL NAME
  FIRST              IVAN
  MIDDLE             M
  LAST               RIGHT
  SUFFIX
SOC SEC NUMBER
SERVICE NUMBER                    BRANCH          EOD              RAD
DATE OF BIRTH                     DATE OF DEATH
REGIONAL OFFICE
INSURANCE NUMBER
REQUESTOR ID
```

Figure 7.01. CEST Ready Screen to Establish Appeal Record

c. **Completion of the VAR Screen.** The VAR screen is displayed after completing the required READY screen entries under the PEST or VARM command. If the CEST command was used, the claims establishment process must be completed prior to accessing the VAR screen (par. 1.05). The file number, payee number, end product code and stub name are carried over from the READY screen. The required VAR screen entries are nature of disagreement, operating element and possibly an insurance number, loan number or medical facility, depending on the operating element. Each field is discussed below in the order it appears on the screen. See figure 7.02.

(1) **INSURANCE NUMBER.** Enter the insurance prefix, V, H, K, J, N, T, W, RS, ARH, AN, JR, or JS followed by the 4- to 8-digit insurance number.

NOTE: If the symbol has only two characters, they should be left-justified when entered.

(2) **LOAN NUMBER.** Enter the loan file number if the appeal is filed on a loan guaranty matter. No prefixes should be used.

(3) **OPERATING ELEMENT.** From the list below, enter the appropriate operating element symbol for the appeal:

10 - Outpatient Activity
21 - Compensation or Pension (Live)
21D - Compensation or Pension (Death)
21E - Education
21F - Forfeitures
21R - Radiation compensation claim
21W - Waiver N/A
24 - Finance
26 - Loan Guaranty

27 - Veterans Assistance Service
28 - Vocational Rehabilitation and Counseling
292 - Policy Service (Ins. Only)
295 - Death Claims (Ins. Only)
297 - Insurance Claims (Ins. Only)
298 - Medical Determination (Ins. Only)

(4) **TRANSFER.** This field will only be used by the receiving station for an appeal that was transferred between regional offices in different RDPC's.

(5) **NATURE OF DISAGREEMENT.** Enter a short description of the nature of the appeal.

(6) **MEDICAL FACILITY.** Enter the medical facility station number on all medical appeals.

(7) **VARMS DISPOSITION** Place an "X" in column 7 on the VAR Screen to indicate the current action being updated in the appeal record. For codes 05, 10, 20, 30, and 51, a date must be entered on line 22, Date of Disposition Field.

```
VAR                    NOTICE OF DISAGREEMENT TRACKING SCREEN
09-11-89
FILE NUMBER 111-22-3333   PAYEE 00    STATION 101    EPC 030    NAME I M
RIGHT
INSURANCE NUMBER                    LOAN NO                  OPERATION ELEMENT
21
TRANSFER      NATURE OF DISAGREEMENT                          MEDICAL FACILITY
CODE     VARMS DISPOSITION                                    VARMS HISTORY
 05    NOTICE OF DISAGREEMENT RECEIVED
 10    STATEMENT OF CASE MAILED
 20    SUBSTANTIVE APPEAL RECEIVED
 42    SUPP STATEMENT OF CASE MAILED
 41    CERTIFIED FOR BVA REVIEW
 43    CERTIFIED FOR LOCAL TRAVEL BOARD
 51    REMAND BY BVA
 30    TRANSFERRED TO BVA
 40    WITHDRAWAL OF APPEAL
 50    OTHER DISPOSITION
 53    FAILURE TO RESPOND
 60    APPEAL RESOLVED BY BVA
 70    APPEAL GRANTED BY RO
 80    TRANSFER THE VARMS RECORD TO
 90    INSURANCE RECORD SENT TO

 DATE OF DISPOSITION              DELETE                    NEXT SCREEN
```

Figure 7.02. VAR Screen generated by Figure 7.01 Entries

7.06 UPDATING VARMS

a. Extreme care should be used in updating records since it is possible for a veteran to have more than one pending appeal. If more than one appeal exists for a file number, the S02 screen (payee selection) will be displayed. Enter an "X" by the record to be updated based on the information displayed on the S02 screen.

b. There are 15 status designations used in VARMS to indicate actions taken during the appeal process. These may be divided into three classes: Mandatory, interim (or temporary) and disposition action.

(1) **Mandatory Actions:**

(a) **05 - Notice of Disagreement Received.** This is the first action recorded on every new appeal added to the system. Enter this code once correspondence expressing disagreement with a regional office decision is identified as a valid notice of disagreement. Enter the date the notice of disagreement was received in the DATE OF DISPOSITION field on the VAR screen.

(b) **10 - Statement of Case Mailed.** Enter this status code when the statement of the case is mailed to the claimant. Enter the date it is released in the DATE OF DISPOSITION field. This code cannot be recorded unless the master record already contains a status code "05" (Notice of Disagreement Received).

(c) **20 - Substantive Appeal Received.** Enter this code when a substantive appeal (VA Form 1-9, Appeal to Board of Veterans Appeals, or its equivalent in writing) is received from a claimant. An entry is required in the DATE OF DISPOSITION field and the system must already contain a status code "10" (Statement of Case Mailed).

(d) **30 - Board of Veterans Appeals.** Enter this code to show that the claimant's records have been temporarily transferred to BVA for review. Enter the date of transfer in the DATE OF DISPOSITION field. The system must already contain a status code "20" (Substantive Appeal Received).

(2) **Interim or Temporary Actions:**

(a) **41 - Pending Transfer (NOT CURRENTLY IN USE).** Enter this code when a substantive appeal (code "20") is of record and the case is certified for release to but is awaiting call-up by BVA.

(b) **42 - Supplemental Statement of the Case.** Enter this code if a supplemental statement of the case is prepared for a claimant. Enter the date it is sent in the DATE OF DISPOSITION field.

(c) **43 - Travel Board.** Enter this code if the claimant requests review of the case at the regional office by the BVA travel board.

(d) **51 - Remand.** Enter this code to show that BVA sent an appeal back to the regional office for further development or correction of a deficiency. Enter the date of the remand in the DATE OF DISPOSITION field. This code can only be entered if the master record previously contained a code "30." Once the action for which the appeal was remanded has been completed and if the appeal remains unresolved, the case should be recoded to a "30" status and returned to BVA.

(e) **90 - Transfer of Insurance Record to Regional Office.** If the substantive appeal (code "20") is received and transfer of the insurance record is requested by the regional office of jurisdiction for a hearing in connection with an insurance appeal, this code is recorded pending receipt

of the temporarily transferred insurance record.

(3) **Disposition Actions:**

(a) **40 - Withdrawal of Appeal.** Use this code to show that the claimant or his or her representative withdrew the appeal prior to submitting a substantive appeal (VA Form 1-9 or its equivalent). It cannot be entered if the master record contains a code "20."

(b) **50 - Other.** Use this code to show disposal of the appeal for a reason not covered by any of the other categories.

(c) **53 - Failed to Respond to Statement of the Case.** Use this code to show that the claimant failed to file a substantive appeal within the required time limit. It cannot be entered if the master record contains a code "20."

(d) **60 - Appeal Resolved BVA.** Use this code when BVA has made a FINAL decision granting or denying the appeal. A code "60" cannot be entered unless the master record contains a code "30."

(e) **70 - Appeal Granted - RO.** Use this code if the regional office grants all benefits sought on appeal, or if the claimant accepts a decision constituting a substantial grant of benefits sought.

(f) **80 - Station Transfer.** Use this code if an appeal is pending and the claimant's records are permanently transferred to another regional office. Do not use the code to show a temporary transfer to another regional office or to BVA for review.

7.07 SUSPENSE DIARIES

a. The computer system generates a suspense date for every transaction processed against a master record.

b. Suspense dates generated by VARMS are based on the date used when entering the status code in the computer. For example, the suspense date for issuing a statement of the case is 90 days from the date of receipt of a Notice of Disagreement.

c. Suspense diaries generated by VARMS for each upcoming status are:

(1) 10 - Statement of Case Mailed	90 days
(2) 20 - Substantive Appeal Received	60 days
(3) 30 - Board of Veterans Appeals	90 days
(4) 41 - Pending Transfer (NOT CURRENTLY IN USE)	180 days
(5) 42 - Supplemental Statement of the Case	60 days
(6) 43 - Travel Board	180 days
(7) 51 - Remand	90 days
(8) 90 - Transfer of Insurance Record to Regional Office	90 days

(9) Codes 40, 50, 53, 60, 70 and 80 will not require a suspense date since they reflect a disposition of the appeal.

7.08 ACTION ON PERMANENTLY TRANSFERRED APPEAL RECORDS

a. To ensure that appeal records are properly maintained, notify the appropriate clerk before transferring a case with an appeal pending or

before taking action on a transferred-in case with a pending appeal.

b. The permanent transfer of a case with a pending appeal to a regional office within the same RDPC jurisdiction is recorded on the VARMS VAR screen by placing an "X" at code 80 and entering the three-digit station number of the receiving station in the three spaces following TRANSFER THE VARMS RECORD TO. This automatically transfers the VARMS record to the receiving station.

c. The transfer of Appeal Cases between RDPC's is recorded in VARMS by inserting an "X" at code 80 and entering the receiving station number following TRANSFER THE VARMS RECORD TO. This generates an automatic printout of the VARMS record. Place the printout in the claimant's folder. Annotate "appeal pending" in the remarks section of VA Form 70-7216a, Request for and/or Notice of Transfer of Veterans Records. When the folder arrives, the receiving station enters an "X" in the "transfer field" (line 4 of the VAR screen) and reenters the data shown on the printout . The VARMS coordinator at the receiving station must promptly notify the VARMS coordinator at the transferring station via Wang E-mail to delete the VARMS record from his or her file.

d. To delete a VARMS record after receiving notice that a transferred appeal arrived at a regional office in another RDPC, enter the command PCAN, the password, the file number, benefit type (VARM), end product code, payee number, and stub name of the case to be deleted. Only those cases currently in a code "80" status can been deleted.

7.09 FOLDER CALL-UP (NOT CURRENTLY IN USE)

a. Every month BVA determines the number of cases they want transferred to them for the upcoming month. The VARMS coordinator obtains the list of cases BVA has selected for transfer by requesting a detailed listing of cases in code "99" status from the WIPP W70 screen. Promptly pull the cases and forward them to BVA within 5 days.

b. This procedure does not preclude transfer of a case involving hardship or emergency. The Adjudication Officer has the authority to transfer a case without following the above procedures.

c. If a claimant who is receiving benefits appeals an overpayment waiver decision, enter code "30" and transfer the case to BVA immediately after certification is completed on VA Form 1-8, Certification of Appeal.

d. If a case cannot be transferred, send an E-mail message to VA Central Office (014A, CO BVA A) stating the reason. Change the VARMS record status from code "41" to the appropriate status.

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M21-1

Change 232

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Department of Veterans Benefits Manual

Adjudication Procedure

COMPENSATION AND PENSION
DEPENDENCY AND INDEMNITY COMPENSATION
ACCRUED AMOUNTS
BURIAL ALLOWANCE
SPECIAL BENEFITS

Veterans Administration
Washington, D.C. 20420

FOREWORD

This manual is designed to provide procedures for the adjudication of claims for pension, compensation, dependency and indemnity compensation, accrued amounts, [and] burial allowance. [ ]

Uniform actions by all offices in the adjudication of claims is necessary in matters of policy, application of laws and regulations, relationships with other Government agencies and other departments and offices of the VA, relationships with veterans, their dependents and their representatives; the compiling of essential data for permanent records and utilization of standard forms and form letters. Procedural details are included where necessary to achieve uniformity, maximum effectiveness or minimal operational cost.

Material presented in this manual is divided into numbered chapters as listed in the contents. Chapters are subdivided where necessary into subchapters. Paragraphs are given a decimal number starting with the digit 1. The digit or digits to the left of the decimal indicate the chapter number and digits to the right of the decimal, beginning with .01 *in each chapter* indicate main paragraphs. Main paragraphs may be further subdivided as shown herein.

Pages are numbered from 1 *within each chapter*. This will enable additional pages to be added to a chapter without disturbing the numerical sequence of page and paragraph numbers. Should it be necessary to interpose new paragraphs between existing ones, the numbering will be carried to the third digit beyond the decimal; i.e., main paragraphs inserted between 1.01 and 1.02 will be 1.01.1, 1.01.2, et cetera. Pages interposed will use number of the page next preceding followed by letters in alphabetical sequence; i.e., pages inserted between 1-1 and 1-2 will be 1-1a, 1-1b, et cetera.

If a revision requires little change in the original text, instructions will be issued stating how the text is to be annotated. If the change is extensive, a new page will be issued, with the new or revised text enclosed by brackets "[ ]," to facilitate recognition of the changes. As new pages are received, they will be inserted in their proper place and the replaced pages discarded in accordance with Records Control Schedule VB-1. Each page of the manual bears the date of publication. Changed pages will carry the date and number of the change. The beginning and ending paragraph numbers for each page will be shown in the upper corner on the page number side.

Deviation from any of the prescribed procedures without prior authorization of the Chief Benefits Director is prohibited.

ETHICAL CONDUCT

Adjudication Division employees engage in decisionmaking processes that annually result in Federal expenditures of billions of dollars. Most of these decisions involve exercise of varying degrees of discretionary authority and are made with a minimum of supervision. Consequently, 38 CFR 0.735-1 has particular applicability to Adjudication Division employees and is cited verbatim:

"For proper performance of the Government business and the maintenance of confidence by citizens in their Government, employees and special Government employees in the Veterans Administration shall maintain the highest possible standards of honesty, integrity, impartiality, and conduct. They shall avoid misconduct and conflicts of interest through informed judgment, as an indispensable means of the maintenance of these high standards."

Adjudication employees must constantly guard against taking part in decisions involving themselves, personal friends or relatives, either directly or indirectly, and must scrupulously avoid any action which can be construed as an effort to influence decisions in such cases. Not only must there be no impropriety, but preservation of the public trust demands that even that which in the eyes of others has the appearance of impropriety be meticulously shunned.

Standards of ethical conduct and related responsibilities are contained in VA Regulations 800-885.

CHAPTER I. GENERAL

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CHAPTER 1. GENERAL

SUBCHAPTER I. APPLICABILITY

1.01 VA OFFICES AFFECTED

a. This manual is applicable to all VA regional offices (including centers with regional office activities) and the RPC (VA Records Processing Center, St. Louis, Mo.).

b. The inclusion of procedures necessary for disposition of a claim in a case within the jurisdiction of Manila, WRO (Washington, D.C.), and other regional offices with special responsibilities does not of itself confer authority upon an office to adjudicate the case. The provisions of chapter 2 on jurisdiction will be observed.

1.02 BENEFITS—LIVING VETERANS

In general, the benefits to which this manual relates in cases of living veterans are:

a.	Disability compensation	38 U.S.C. 101(13).
b.	Disability pension	38 U.S.C. 101(15).
c.	Reserve Officers and Emergency Officers retirement pay	Public Law 77-262 and Section 11, Public Law 85-857.
d.	Automobile or other conveyance	38 U.S.C. ch. 39.
e.	Specially adapted housing	38 U.S.C. ch. 21.
f.	Clothing allowance	38 U.S.C. 362.
g.	Medal of Honor pension	38 U.S.C. 562.

1.03 BENEFITS—DECEASED VETERANS

In general, the benefits to which this manual relates in cases of deceased veterans are:

a.	Death compensation	38 U.S.C. 101(13), 417.
b.	Dependency and indemnity compensation	38 U.S.C. 101(14).
c.	Special allowance (DIC)	38 U.S.C. 412(a).
d.	Death pension	38 U.S.C. 101(15).
e.	Accrued benefits	38 U.S.C. 3021.
f.	Lump sums payable at death	38 U.S.C. 3202(d).
g.	Burial and plot allowance—Reimbursement	38 U.S.C. ch. 23.
h.	[Special Allowance (REPS)	Section 156, Public Law 97-377.]

1.04 DEFINITIONS

a. "Adjudication Division" means: Adjudication Division in a regional office or center.

b. "Adjudication Officer" means: Adjudication Officer or [ ] supervisory designee in a regional office or center.

c. "District Counsel" (formerly "Chief Attorney") means: District Counsel or [ ] designee in a regional office or center.

d. "Authorizer" means the approving signatory on payment actions in the Adjudication Division of a regional office or center.

e. "Service Department" means Army, Navy (including Marine Corps), Air Force, Transportation (Coast Guard), Health [and Human Services] (Public Health Service), and Commerce (Coast and Geodetic Survey and its successory agencies, ESSA—Environmental Science Services Administration and NOAA—National Oceanic and Atmospheric Administration).

SUBCHAPTER II. FOLDER MAINTENANCE

1.05 TYPES OF FOLDERS

An Adjudication Division is concerned primarily with C, XC, R&E and DEA folders. There are other types of folders, however, which are necessary to house records for temporary periods or to maintain records pertaining to benefits not under the jurisdiction of the Adjudication Division. The information in these folders is available upon request if needed for adjudication of a claim. The different types of folders are listed below. The authority for their establishment and contents is contained in [M23-1] part I.

a. **Claims Folders**

(1) **C-Folder.** A red-rope folder for a living veteran, identified by file number with a "C" (or "SS") prefix and name. (See par. 21.08 re identifying name of veteran.)

(2) [**Folders for Deceased Veterans**]

(a) **XC-Folder.** The red-rope folder of a deceased veteran to which a file number with an "XC" (or "XSS") prefix has been assigned. If a C-folder existed at death, it is converted to an XC-folder under the same number, otherwise a new file number (XC- or XSS-) is assigned [and a lightweight folder is established.]

(b) **Inactive XC-Folder.** When all pending claims for gratuitous death benefits have been allowed or disallowed, an "inactive XC-Folder" may be established. The Correspondence activity will separate the "C" and "XC" material if the folder contains one or more running awards and the "C" records are at least one-half inch thick [M23-1], pt. I, par. [13.30]. The "inactive XC-Folder" (i.e., the old "C" folder) will thereafter be [placed in inactive storage area until they are retired as provided in RCS VB-1, part I, item 3-140, and M23-1, part I, chapter 15.]

b. **Insurance Folders**

(1) **Life Insurance Folder.** A folder maintained by Insurance activity, identified by National Service Life Insurance or U.S. Government Life Insurance number having the following prefixes: [ ] V, H, RH, RS, [ ] K, J, JR, JS, [ ] and W.

(2) **Disability Insurance Folder.** A folder maintained by Insurance activity, identified by the life insurance number with prefix, containing claims for disability insurance benefits.

c. **R&E Folder.** A kraft folder [(stock item No. 7530-00-680-2420)] pertaining to claims for vocational rehabilitation training under 38 U.S.C. ch. 31 identified by file number and name. (See M22-2, pt. I, par. 3.01.)

NOTE: Except for material relating to counseling, all material relating to applications under 38 U.S.C. ch. 34 will be maintained in the C-folder. (See M22-2, pt. I, par. 3.02.)

d. **DEA Folder.** A blue manila folder [(stock item No. 7530-00-680-2421)] pertaining to claims for Dependents' Educational Assistance under 38 U.S.C. ch. 35 identified by the claimant's name and the veteran's file number with a letter suffix assigned for each such claimant. (See M22-2, pt. I, par. 3.03.)

e. **Loan Guaranty Folder.** A folder identified by a loan number containing all papers relating to a request for a certificate of eligibility or an application for the guaranty or insurance of a loan or for a direct loan.

f. **Principal Guardianship Folder.** A folder identified by name of living or deceased veteran containing the file material relating to recognition or appointment of a fiduciary for an incompetent veteran or his/her incompetent or minor dependents entitled to VA benefits.

g. **Outpatient Treatment Folder.** A folder, maintained in the DM&S activity, containing the veteran's outpatient medical and dental treatment records, identified by name and social security number.

(1) Upon death of veteran, this folder will be retained by the outpatient clinic.

(2) When requested, the treatment folder will be furnished by the outpatient clinic for review. Copies of material pertinent to the claim will be made and filed in the XC-folder. The treatment folder will be returned to the outpatient clinic for retention and retirement in accordance with existing records disposal directives.

h. **Patient's Correspondence Folder.** A folder, maintained in the DM&S activity, containing application for hospital treatment, related correspondence and records (except clinical records) of a veteran treated in a VA [medical center] identified by social security number and name.

(1) Upon death of a veteran the death certificate and copies of VA Forms 10-2065, Funeral Arrangements, and VA Form [60]-2138, Order for Supplies or Services, *when burial services are provided by the VA,* will be forwarded to the Correspondence activity for combining in the XC-folder.

(2) When requested, the entire folder or copies of certain documents contained therein will be furnished. If the correspondence folder is obtained, it will be returned as soon as it has served its purpose.

i. **Military File.** A file of miscellaneous material relating to veterans, maintained in alphabetical order by calendar year, generally consisting of correspondence of a general nature which may be of value if a claim for benefits is filed at some future date. Applications and correspondence pertaining to alleged veterans who cannot be identified as having had military service are also maintained in this file. (See M23-1, pt. I, par. [13.37])

[j. **REPS File.** An orange manila folder that contains the application for benefits under section 156 of Public Law 97-377, the initial award and subsequent award actions, and correspondence related to the REPS program. The folders are maintained in a special processing unit in the VA regional office, St. Louis (21Q). (See par. 40.39b.)

k. **Job Training Folder.** A lightweight yellow folder, stock number NSN 7530-00-761-4110, identified by veteran's name and file number containing all material pertaining to the veteran's eligibility for and participation in job training under Public Law 98-77.]

1.06 CONFIDENTIAL NATURE OF INFORMATION IN FOLDERS

Except for the monthly rate of monetary benefits payable, all information contained in folders is privileged and confidential and no disclosure may be made except by written request or consent of the individual to whom the records pertain or as authorized by VA Regulations [(38 CFR 1.500-1.584)] (See also MP-1, pt. II, ch. 21 re special procedures for release of sensitive information.) VA personnel will not review or discuss information in folders except to the extent required for the performance of their official duties. Any request for the address of a beneficiary or claimant which may not be furnished under the VA regulations will be handled as provided by MP-1, part II, chapter 6, paragraph 4k.

1.07 PAPERWORK MANAGEMENT AND RECORDS DISPOSAL

a. **Policy.** It is the policy of the Department of Veterans Benefits that only essential material will be created and filed, and that material of only transitory value will not become a part of official records. The objective is to reduce VA records in weight and bulk, save storage space, and improve operations by eliminating or disposing of unnecessary documents.

b. **Authority.** The Records Control Schedule VB-1, is the sole authority for disposition of records under jurisdiction of the Department of Veterans Benefits.

c. **Responsibility of Adjudication Division Personnel.** Adjudication Division personnel will refrain from permanently filing redundant and nonrecord material in claims folders (see par. 5.04 re "[redundant and highly repetitious letters].). Adjudicators, authorizers, rating board members, and other properly designated personnel are authorized to remove such material when they come across it in the normal handling of the file. Disposition will be in accordance with the records control schedule.

d. **Responsibility of Records Liaison Officers.** It is the responsibility of the Records Liaison Officer to specifically identify all items with the records control schedule as appropriate for disposition. He [or she] will cooperate with the station Records Officer in assuring appropriate action in all paperwork management.

e. **Redundant and Nonrecord Material.** The records control schedule provides, among other things, for the disposition of redundant and nonrecord material after its initial purpose has been served. Adjudication Division personnel will refrain from filing or will remove [and dispose of] the following material [in accordance with RCS VB-1, part I, item 13-052] after it has served its initial purpose, provided that it has no additional legal, administrative or historical value:

(1) Diary forms and suspense copies of correspondence.

(2) Reference and routing slips.

(3) Control records.

(4) Incoming transmittal or cover letters which contain no information and are without evidentiary value.

(5) Envelopes and returned VA original letters without evidentiary value.

(6) Requests received for civil service preference certificates. (See ch. 13, subch. I.)

(7) VA forms or form letter requests for evidence (returned originals or file copies).

(8) Rating board worksheets.

(9) Flashes.

(10) Target prints not specifically required by directives.

[(11) **Dental X ray films.** (See RCS VB-1, part I, item number 13-054.000.)]

f. **Other Records.** The records control schedule designates other records as appropriate for disposition.

1.08 CARE IN HANDING FOLDERS AND DOCUMENTS

a. **General Responsibility.** Care and maintenance of a folder is the responsibility of all VA personnel to insure preservation of all pertinent records and documents.

b. **Stamping and Marking.** Folders and documents will not be stamped or marked except according to established procedure.

(1) Stamps will not be affixed directly on original documents, such as discharge certificates; court records and papers to be filed in court; marriage, birth and death certificates; divorce decrees, and similar records. (See par. 1.09c for recording date of receipt.) The stamp will be affixed to all other mail so as not to cover any part of the correspondence or fill any space which will be used in further processing. [ ]

(2) [Items (even when considered particularly significant) contained in service records, examinations, and other evidentiary documents will not be checked, underscored, circled or highlighted. This creates the appearance of a lack of open-mindedness when the records are reviewed by a third party. It is damaging to the image of the VA in that it suggests bias and it is considered, often erroneously, to pinpoint a special reason for denial. In reviewing evidence in a claim for adjudication purposes, it is normal to make notes of the relevant facts. However, these notes are for internal use only and should not be attached to the folder.]

c. **Marking Documents for Filing.** It will not be necessary to mark for "File" any correspondence or evidence received and filed in the claims folder which results in a rating, authorization or release of a letter referring to or indicating receipt of such correspondence or evidence. Otherwise, the correspondence or evidence will be marked at time of filing, with the notation "NAN," initialed and dated by the employee responsible for action. Care will be exercised not to deface original documents as covered in subparagraph b above. (Also see par. 5.06.)

d. **Use and Removal of Paper Clips and Staples**

(1) The use of paper clips to fasten routing slips, documents, etc., to folders is preferred. If the use of paper clips is not adequate only the minimum number of staples necessary to insure security should be used in fastening such material to a folder.

(2) Upon receiving a folder all personnel are responsible for the immediate removal of useless staples and paper clips.

(3) Before filing documents in a folder, staples which obstruct visual review or prevent turning to the page must be removed.

(4) Particular care should be taken to avoid stapling or otherwise mutilating punched cards or OCR documents prior to completion of *all* machine or scan processing for which they were designed.

1.09 FILING RECORDS AND DOCUMENTS

a. **Hole Punching and Filing.** Extreme care will be exercised in punching holes properly and in filing records and documents in a neat, orderly manner to facilitate reading, turning of pages, and preservation.

(1) Material printed head-to-head and designed for side filing will be attached at the side-file position to a backing sheet in such manner as to allow sufficient space at the top of the backing sheet for punching and filing in the standard folders designed for top filing.

(2) When filing material printed head-to-foot in segregated (compartment) folders designed for side filing in the center position, attach the material at the top-file position to a backing sheet, allowing sufficient space at the left side of the backing sheet for side punching and filing.

b. **Filing in Chronological Order.** Records and documents will be filed in order of date of receipt, the most recent on top.(Only slight variation in this order is permitted, if it will improve continuity.) (See subpars. f and g re proper filing in standard and segregated folders.)

c. **Return of Original Records.** Original records which are to be returned will not be stamped, stapled, punched or marked. Instead, the date of receipt will be stamped on a paper tag and fastened to the original record by paper clip. The original record will be stored in the folder in an envelope (punched for filing) on which the contents will be briefly described.

(1) [Before the document is returned to the claimant, a certified true copy will be made and filed, containing the certification, the date and VA office at which the original was received, and the signature and title of the person authorized to certify authenticity.]

(2) The term "original record" is not to be strictly construed. Any nonoriginal document which (because of age, issuance by a foreign government or other factor) has high sentimental value and is irreplaceable or replaceable only at considerable effort or cost, may be treated as an original record.

(3) Return may be by use of FL 21-8 if no dictated or other form letter is required. The cover letter used for this purpose will identify the document being returned, and a copy of the letter will be retained.

d. Copies Prohibited

(1) The reproduction of the following documents is forbidden by law:

(a) U.S. Certificates of Citizenship or Naturalization,

(b) U.S. Passports, and

(c) U.S. Immigration papers.

(2) These documents will be returned as soon as they have served their purpose. A memorandum to file will be made identifying the record, date original was received, including a resume of pertinent contents, signed by an adjudicator or authorizer.

e. Out-Filing Forms for Control Purposes. The file copy of [the] diary form ([ ] [ ] VA Form [ ] 21-693 [ ]) will be out-filed in the center section of the claims folder so that it will remain on top of all subsequent file material and serve as an immediate notice.

f. Standard C- or XC-Folder. A folder consisting of three parts, each equipped with top-fastener for filing documents:

(1) Inside Left Flap

(a) Awards, stop award and suspend or resume pay notices, disallowances, and code sheets pertaining to all types of pensions, compensations, insurance, servicemen's indemnity, accrued benefits or burial allowance.

(b) Forms in death cases showing that no application for benefits was sent to any person and forms showing no claim was filed for certain benefits, when applicable.

(c) Application for and action taken on deductions from VA benefit payments.

(d) Change of name. [ ]

(e) AFS (Advanced Record System) notices of death and jurisdiction [or Target BIRLS NOD screen.]

(f) Appeal record card.

(g) Computer notices of benefit payment transactions, writeouts and notices of exceptions, referred by the data processing center. These will be removed and disposed of [in accordance with Records Control Schedule VB-1, part I, item 13.052.4] when their purpose has been served.

(h) VA Form 4-5851, Insurance Award Statement—Government Life Insurance.

(2) **Inside Right Flap.** This section is generally reserved for filing VA Form [21]–22, Appointment of Veterans Service Organization as Claimant's Representative, power of attorney, declaration of representation or delegation of authority to private persons to assist in prosecution of claims. However, when a claim for educational benefits under 38 U.S.C. ch. 34 is filed in the case, the application and related training material is also filed in this section. VA Form [21]–22, if any, will then be out–filed to insure that it will appear above the training material at all times.

(3) **Inside Center Section.** All other material including formal and informal claims or applications and related evidence and correspondence will be filed in this section in order of date of receipt or, as to file copies of correspondence released, date of release and, as to documents prepared in the Adjudication office (e.g., ratings and other formal determinations), date of preparation or promulgation.

g. **Segregated (Compartment) C– and XC–Folders.** Segregated folders are comprised of four compartments. Documents will be filed in each compartment as specified below.

NOTE: Although segregated folders are no longer being created for new claims, those already in existence will be used and maintained. When such folders are in need of renovation or rejacketing, the Files activity will repair the existing folder or transfer the contents to another folder, continuing the segregated format. No effort will be made to convert such folders to the standard format.

(1) **Compartment A.** Authorization forms, controls and other specified material of the types indicated for filing on the inside left flap of standard claims folders will be filed in this compartment of segregated folders. (See subpar. f(1) above.)

(2) **Compartment B.** Documents constituting the basis for adjudicative determinations (except rating phases), such as:

(a) Formal or informal claims or applications, including claims for increase or apportionment of benefits.

(b) Requests for and records received from service department or foreign government pertaining to service data, medical and dental examinations or treatment.

(c) Evidence relating to marital status, dependency, relationship, birth, age, income or value of estate.

(d) Requests for determinations of basic eligibility of veterans for benefits.

(e) All legal decisions affecting the case.

(3) **Compartment C.** Evidence and documents pertaining to medical treatment and rating phases of the claim, such as:

(a) Request for and reports of examinations, hospitalization, observation and treatment by VA and private physicians.

(b) Report of investigations or social surveys and affidavits of persons other than physicians regarding the physical or mental condition of a claimant.

(c) Decisions of rating boards and appellate bodies, including reports of personal hearings related to ratings.

(4) **Compartment D.** File copies of all communications, records, and documents not of the type described above for filing in other compartment.

h. **DEA Folder (38 U.S.C. Ch. 35).** A blue manila folder consisting of two parts, each equipped with top–fastener for filing documents pertaining to 38 U.S.C. ch. 35 benefits. [ ]

i. **R&E Folder (38 U.S.C. Ch. 31).** A gray kraft (brown color) folder consisting of two parts, each equipped with top–fastener for filing documents pertaining to 38 U.S.C. ch. 31 benefits. [ ]

j. **Counseling Folder (38 U.S.C. Chs. 31, 34).** A manila (buff color) folder consisting of two parts without fastener. The 38 U.S.C. ch. 31 counseling folder is prepared by the VR&C (Vocational Rehabilitation and Counseling) Division and the outer left flap is stamped "Chapter 31." After counseling action is completed and induction into training is in order, the folder will be used as the training subfolder described under subparagraph k below. The 38 U.S.C. ch. 34 counseling folders will be prepared by the VR&C Division upon receipt of VA Form 28–1944, Eligibility, Entitlement and Scheduling Information, and the claims folder. The person preparing the folder will stamp the outer left flap with the words "Chapter 34." Before documents may be filed in the counseling folders, acco fasteners must be inserted at the top of both inside flaps. [ ]

k. **Training Subfolder (38 U.S.C. Ch. 31).** The 38 U.S.C. ch. 31 counseling folder described in subparagraph j above, will be converted to a training subfolder for each veteran found in "need" who is pending induction into training. The folder will be maintained by the VR&C Division for each veteran whose case is in a "Pending Induction," "in training," or interrupted" status. The outer left flap of the folder will be stamped with the words "TRAINING SUBFOLDER" at the time the folder is converted. [ ]

l. **Handling of VA Records Pertaining to Treatment of [Human Immunodeficiency Virus (HIV) or Syndrome (AIDS),] Alcohol Abuse, Drug Abuse or Sickle Cell Anemia**

(1) Title 38, United States Code, section 4132, provides for the confidentiality of VA records pertaining to [human immunodeficiency virus (HIV) or Syndrome (AIDS),] alcohol abuse, drug abuse or sickle cell anemia. This includes information received, obtained or maintained by an employee or contractor of the VA for the purpose of performing [HIV–AIDS,] VA drug abuse, alcoholism, or sickle cell anemia program or activity functions regarding an identifiable patient. A program includes treatment, rehabilitation, education, training, evaluation and research information.

(2) DM&S will be responsible for identifying and permanently maintaining the original VA records pertaining to [HIV–AIDS,] alcohol abuse, drug abuse or sickle cell anemia. Such records will be specifically identified as coming under the purview of 38 U.S.C. 4132.

(3) For purposes of processing benefit claims, copies of such records will be *loaned* to the Adjudication Division.

(4) No copies of these records will be made by regional office personnel and after adjudication or other proceedings have been completed, the records will be destroyed. Appropriate disposition of these records will be accomplished using the means available at the regional office; i.e., shredding, incineration, etc.

(5) These VA records may only be retained in the claims folder if the claimant submits them. However, the veteran must be advised that such documentation is available upon request from the VA medical facility and need not be maintained in the claims folder unless the claimant so desires.

(6) Reports of VA physical examinations for the purpose of evaluating a disability are not included under 38 U.S.C. 4132 and therefore will be maintained in the claims folder.

(7) Records pertaining to [HIV–AIDS,] alcohol abuse, drug abuse or sickle cell anemia which pertain to non–VA programs will also be maintained in the claims folder.

(8) Generally, records as specified in subparagraphs (5) and (7) above, will not be redisclosed without the individual's consent.

[ ]

SUBCHAPTER III. CONTROLS

1.11 GENERAL

When required in this manual or other directives, future date controls for claims folder review, action and pending issues will be established and maintained in accordance with this subchapter unless otherwise specifically directed. There are ~~three~~ two basic controls:

a. Computer master record controls—specific or automatic (par. 1.12).

~~b. Local controls—by use of VA Form 21-895, Diary Slip (par. 1.13).~~

b. Pending issue control—by use of Target screen 102 (Claims Establishment) or 103 (Pending Issue Control) procedure (par. 1.15).

1.12 COMPUTER MASTER RECORD CONTROLS

a. General. Computer control can be established and maintained only if there is a master record existing or being simultaneously established for the account for which the control is required. A maximum of nine segments can be maintained in the individual master record.

(1) Computer-Generated Controls. Certain future controls are automatically programed so that computer-generated notices are routinely issued on the basis of master record award and/or statistical data, such as the letters or notices generated as children reach age 13, 18 or 21 (par. 10.06a).

(2) Controls Established by Adjudication. Computer future date controls may also be established by Adjudication through the use of specific reason codes. Such controls will be [manually entered or typed onto] the following forms and [transferred to] Target [screens for processing to the Hines computer.]

(a) VA Forms 21-6789, Deferred or Confirmed Rating Decision, and 21-6796, Rating Decision (par. 49.14).

(b) [Screen 220, Future Date Diary Control] (subpar. b below).

(c) Screen 301 (Rating Data) (par. 15.17).

(3) Selection of Control Dates. The computer reviews pending control dates only during end-of-the-month runs. At that time, the designated month and year of each control is examined and those which will "mature" in the second following month are selected. For example, EOM January selects control dates in which "March (of the current year)" appears. The resultant field notices would then be issued for delivery during the first week of February. Therefore, in establishing computer future date controls, it must be borne in mind that the expected computer notice will be received during the first week of the calendar month *immediately preceding* the month fixed in the control date so as to insure timely action on the matured control. When the diary matures VA Form 20-6560, Notice of Benefit Payment Transaction (Hines), will be issued.

b. [Screen 220, Future Date Diary Control—DIAR Command.] Any future date control should be established, changed or canceled by use of [screen 220]. [ ] Future date controls for establishment of a future physical examination [ ] are to be entered on screen 301 when award action is to be taken. A future date control can be established using screen 401 (Special Conditions) when processing an award action. (See par. 15.23b(5).)

(1) [Ready Screen. Entry of the full file key is required (payee number, file number, benefit type, and stub name).

(2)] Establishment. Control dates will be established for computer maintenance in chronological order, by furnishing [an "x" in the add field] and the two-digit month, year, and reason code in the columns provided. The reason codes, and the specific limitations on the period for future control, if any, are as follows:

REASON CODES	MAXIMUM CONTROL LIMITS
01—Future Physical Exam	5 years
[ ]	[ ]
03—Helpless Child Review	Open
04—NSC TB [38 CFR 3342] Rev.	6 months
10—Review for $1500 Limitation ([38 CFR 3.557])	Open
11—Reduction Under [38 CFR 3.551(b)]	6 months
12—Restore Rate [38 CFR 3556(d)]	6 months
13—Disappearance 7-Year Review [38 CFR 3.656(c)]	7 years
20—Helpless Child Reaches Majority	3 years
21—Verify School Attendance	4 years
22—Verify Income or Dependency	3 years
[ ]	[ ]
30—Local Regional Office Special Use (Specify in Remarks)	Open

[(3) **Cancellation.** An entry of an "x" in the delete field will cancel the existing future date control in the master record.

(4) **Change.** The existing future control shall be canceled by transmitting an "x" in the delete field. The new control shall be established by processing an "x" to the add field with the two-digit month, year and reason code in the columns provided.]

1.13 USE OF VA FORM 21-693, DIARY SLIP

When necessary controls are not maintainable by computer master record input control or use of CEST/PEST procedure, (no computer master record, need for centralized control for special review, etc.), control will be by use of VA Form 21-693.

a. Preparation and File Requirements. This form will be prepared in duplicate with the file number and the veteran's last name and first two initials entered in the spaces provided.

(1) The review or call date will be entered in the left column with the reason *adequately* set forth in the central portion. Such entries as "Evidence" or "Letter of 10-15-63" are prohibited.

(2) Multiple call dates will be entered with the earliest date uppermost and associated with the reason by encircled numbers.

(3) The preparer will write out his/her name and symbol, and date of preparation in the space provided. Name and date stamps may be used.

(4) The carbon copy will be out-filed in the folder (see par. 1.09e) and the original referred for control maintenance in accordance with local procedures.

b. Cancellation. When, *prior to the expiration date,* it is found that control is no longer required, the carbon (file) copy will not be destroyed unless the original has been obtained for simultaneous disposition [in accordance with Records Control Schedule VB-1, part I, item 13-010.05], otherwise, the word "Cancel" will be written across the face of the file copy and referred for necessary action to clear the local control file.

c. Advancement or Changes. When the call date is to be advanced, the alteration must be accomplished simultaneously on both the original and carbon copy. If the original has not been received, it will be necessary to prepare a new VA Form 21-693 using the cancellation procedure to dispose of the prior unexpired original.

1.14 BASIC PRINCIPLES FOR CONTROLS

a. General. The following paragraphs in this subchapter describe and provide procedures which will:

(1) Establish control of pending claims and issues.

(2) Determine elapsed time for overall processing for completed end products and compliance with timeliness standards.

(3) Prescribe review procedures for pending claims and issues.

(4) Provide data for operating performance reporting.

b. Deviations. Procedures set forth herein are based on use of the Target System and are mandatory for all regional offices. Local deviations from the procedures prescribed in this subchapter are not authorized unless approved by the Chief Benefits Director.

c. Definitions and Codes. Definitions applicable to these procedures are:

(1) End Product. The work unit classification provided by DVB Manual M21-4, appendix C.

(2) Initial Division Processing. That processing period commencing when the folder or claim is in the division because of the receipt of a new claim or issue. This processing period concerns the initial action taken in connection with the new claim or issue.

(3) Intermediate Division Processing. That processing period representing current action in the Adjudication Division when the folder has previously been handled for initial processing of the same issue, returned to file in an interim status, and is now in the division for additional (but not final) action.

(4) Final Division Processing. That processing period in the Adjudication Division which results in the final disposition of an issue and the recording of an end product upon release of the folder from the division.

(5) Overall Processing Time. That period of time from the initial receipt by the VA of an issue or claim requiring adjudicative action to the date of final disposition of the issue or claim.

(6) Suspense Date. The designated date when a pending issue requires review.

d. Responsibility

(1) The responsibility for determining the need for control and initiating action for this purpose will be with the employee in the Authorization activity as provided for in paragraph 1.21.

(2) The final responsibility for determining the end product involved and when final disposition has been accomplished will be with the Authorization activity employee taking the final action.

e. Suspense Control Principles

(1) A large percentage of the documents and evidence essential to final disposition of claims and issues will be received routinely on request. If this were always the case, no suspense control would be necessary nor would suspense action expedite processing. Consequently, the purpose of suspense control is to identify those claims for which normal processing does not occur so that:

(a) Affirmative adjudicative action can be taken after a specific period of time, or

(b) Followup or review action can be taken when final disposition of the end product is not accomplished within a specified period.

(2) The suspense date designated in the initial division processing should consider when it is likely that final disposition of the end product will occur.

(3) Suspense dates should not be so extended as to adversely affect overall processing time.

(a) If a realistic suspense period is used, it is probable the control will be cleared before the scheduled suspense date is reached.

(b) Should a large volume of folders be identified for review, the suspense period is undoubtedly too short, or there is delayed processing at some stage which requires specific management attention.

(4) The suspense control principles are a guide for use in establishing the proper suspense period. These general principles do not supersede any control periods specified in other directives.

1.15 TARGET SYSTEM CONTROL OF ISSUES—CEST/PEST

a. General. A claim and associated pending issue controls will be established, changed, canceled or cleared by use of one of the following Target System commands:

(1) CEST (Claims Establishment). For establishment of an original or reopened claim when there is no active master record.

(2) PEST (Pending Issue Establishment). For supplemental claims when there is an active master record.

(3) PCLR (Pending Issue Clear). For clearing an existing pending issue and associated controls with end product credit when no claim action; e.g., award, is required.

(4) PCAN (Pending Issue Canceled). For cancellation of a pending issue and associated controls with no end product credit.

[(5) PCHG (Pending Issue Change). For changing limited pending issue control data.]

[(6)] CAUT (Claims Authorization). For authorization action and generation of an award/disallowance transaction. Can also be used to continue the control or establish a new control. (See par. 15.09.)

[(7)] FNOD (First Notice of Death). Establishes a pending (diary) issue based on notice of a veteran's death.

b. Controlled Issues. CEST or PEST procedures will be used for the establishment and maintenance of controls on all pending claims which are expected to result in award or in disallowance action. The person deciding control is necessary will be responsible for initially identifying the end product involved, the type of control necessary, and the applicable control period. Control will be established in the initial division processing period. It is the responsibility of the individual establishing control to review any existing pending issues with

the same file number to insure that the new claim material is not related to an existing issue. For this purpose, the S04 (Payee Selection) screen will be displayed prior to display of the 102 or 103 screen if there are any issues with the same file number in the pending issue file.

NOTE: When establishing multiple end product controls for the same case (payee number, benefit type and end product), the issues must be established on different processing days.

c. **Completion of Screen 102 (Claims Establishment).** The Full File key must be entered on the Ready screen: payee number, end product code, benefit type, full name, and stub name if the claimant is other than the veteran (payee 00).

NOTE 1: The basic end product will always be entered; e.g., 130 or 136 if a foreign case is being established by WRO or the Houston regional office. If multiple issues are established for the same payee, the system will accomplish the necessary incrementation of the end product; e.g., 131-135 for domestic issues and 137-139 for the appropriate foreign issues.

NOTE 2: Security Control. If the claimant is identified as an individual whose case should be maintained under security control, that control is to be established through the station security officer. Once a claimant is so identified, any future processing or access of that individual's record will require the appropriate security level.

(1) **NAME AND ADDRESS.** Enter the claimant's name and address. A ZIP code and a valid (two-position) State abbreviation are required for all domestic addresses. If known, the foreign mail code should be entered for foreign addresses. If not entered, the system will attempt to generate the foreign mail code from the country entered.

NOTE: For a record purpose award or in those cases where an address is not required; e.g., dental claims or eligibility determination, for name and address enter the claimant's name on the first line and "For Record Purposes" on the second line. The entry for ZIP code in such cases is to be RP001.

(a) **General.** Entries in this item are restricted to 6 lines of 20 characters each. A seventh line of five characters is provided for entry of ZIP code or foreign mail code. However, the ZIP code or foreign mail code may be entered on lines two through six.

1. The 20-character limitation includes spacing between initials and names, symbols or marks, etc. Fractions will require three spaces; e.g., "1/2."

2. No punctuation will be used.

3. Numerics will not be acceptable on the first line.

(b) **Selection of Name**

1. For veteran payees, the name of the veteran, as determined in accordance with paragraph 21.08 and printed on the outside of the claims folder, will be used. In death cases, when the surviving spouse beneficiary uses a surname by which the veteran was known which differs from the name determined for the veteran, the beneficiary's preference should control.

2. Subject to the limitations specified in the preceding paragraph, the entry for the name of a payee should follow the signature on the application, since it is assumed this would be the claimant's preference for check endorsement purposes, notwithstanding the fact that this may differ from the name as determined for other purposes. (See par. 21.08.) However, when the payee's signature uses initials only and one of the given names is shown in full elsewhere, the full given name, with the initial of the other given name, together with the surname may be entered to insure against confusion in determining the person rightfully entitled to the check.

3. Omit titles such as "Mrs.," "Doctor," "Rev.," etc. If the payee is a married woman or widow, her own first name, middle initial (if any), and her husband's surname will be used. (But see subpar. (c) below re Spanish names.)

(c) **Spanish Names**

1. By Spanish custom, a child is given a first or a first and middle name, easily identifiable as given names since they generally have Anglo-Saxon equivalents; e.g. Maria (Mary), Juan (John), Jaime (James).

2. The child's father's surname follows the given name(s), and the child's mother's maiden surname is added at the end, usually separated by a hyphen. (Example: Miguel Antonio Garcia-Lopez; Garcia is the father's surname, and Lopez is the mother's maiden surname.) Informally, this person would be known as "Miguel Garcia," but in formal address he should be referred to as shown in the example.

3. When a woman marries, she drops her mother's maiden name, retains her father's surname, and adds her husband's father's surname, preceded by "de" (Meaning "of" or "belonging to").

4. If a woman is widowed, she inserts "vda" before the "de" (as the abbreviation of "viuda" meaning "widow"). EXAMPLE: Maria Louisa Diaz-Fernandez marries Miguel Antonio Garcia-Lopez. Her married name becomes Maria Louisa Diaz de Garcia. Her name as widow would be "Maria Louisa Diaz vda de Garcia."

(d) **Entry of Payee Name**

1. The full first name, middle initial and full surname should be entered on the first line.

2. To conform with the line limitation, it may be necessary to use initials (only) and the surname.

3. When, either because of the length of the name, insistence by the payee or need to avoid confusion with persons having similar names, it is necessary to use more than one line for the full name, the given name and middle name or initial (as required) may be entered on the first line and the surname (indented two spaces) on the second.

NOTE: In such instances enter a zero for the item NAME LINE NO.

4. In no instance should a surname be broken and divided onto another line, unless entry of the surname and one initial exceeds the line limitation, or the complete name and address could not otherwise meet the six-line limitation.

5. Unusual names, such as a widowed payee with a Spanish name, would be shown as follows:

Juanita A. Cruz
vda de Lopez

(e) **Entry of Address**

1. The city, State and ZIP code must be entered, in that order. For foreign addresses see paragraph 2.02a(5) or 2.03a(2) and MP-1, part II, chapter 10, appendix C, section F, paragraph 8.

2. An address will not be shown as "care of " any person or organization actively engaged in prosecution of the claim upon which the award is based, unless such arrangement is desirable as in cases involving fiduciary relationship. When the latest address is "care of " any such person or organization, the claimant will be advised of the necessity of furnishing his or her address of residence for VA purposes. When in order, the entry "care of (name)" will be inserted following the payee name (and legend), immediately prior to the address.

3. In no event will an address be shown in care of a Government department or agency, except as provided in paragraph 15.42e.

4. Although post office box or general delivery addresses will be acceptable without question in areas where they are usual and customary; in others, particularly in municipalities where adequate delivery and carrier service is furnished, the claimant's address of residence should be ascertained for VA purposes.

5. The confidential list of addresses in Philippine cases should be consulted when the payee resides in the Philippines.

6. Maximum use of abbreviations will be made (e.g., N-North, St-Street). Names of cities and States will not be abbreviated except for those specified in the list approved by the United States Postal Service and published in conjunction with the table of mail codes in MP-6, part IV, supplement No. 1.1, chapter 5.

(f) **Fiduciary Case.** See paragraph 15.23b(14).

(2) **NAME LINE NO.** Enter the line number from the address on which the veteran's or beneficiary's name was entered. However, for consolidated awards, corporate fiduciaries, and any other instances where the claimant's name cannot be matched against the stub name, enter a "zero."

(3) **COUNTY CODE.** This is an optional field for use in entering an applicable three-position county code.

(4) **STATE CODE.** This is an optional field for use in entering an applicable two-position State code.

(5) **FIDUCIARY FILE LOC.** This is an optional field for entry of the station location of the fiduciary file as applicable.

NOTE: Entry of the fiduciary file location does not preclude entry of this and other required fiduciary data on the 401 or 402 screen. (See par. 15.23.)

(6) **BENEFICIARY STUB NAME.** This field is for entry of the appropriate stub name of a beneficiary if other than a veteran (payee 00). Enter the claimant's first and second initials and stub name (first five letters of surname).

(7) **DATE OF CLAIM.** This date will serve as the basis for determining the actual processing time from the date a claim is received in the VA regional office until the claimant actually receives payment. Definitions used below are for this purpose only and are not intended to change the meanings of "types of award action" as defined in paragraph 15.06.

NOTE 1: When an earlier commencing date is established by receipt of a "claim" in another U.S. Government agency pursuant to VAR's 1108 and 1153, this authorization will be justified by notation in "Remarks." (See also pars. 21.02b and 32.05.)

NOTE 2: The date of claim is not to be entered if only a future diary is to be established using the FUTURE REASON field.

(a) **Original Awards.** On the first award of benefits to this beneficiary resulting from this beneficiary's first claim for benefits, enter the earliest date of receipt as recorded on the disability or death claim (formal or informal) constituting the basis for the award being prepared. (This date will not necessarily be the same as effective date of award.)

(b) **Reopened Awards.** On awards resulting from claims previously disallowed or terminated, enter the date of receipt as recorded on the reopened disability or death claim (formal or informal) constituting the basis for the award being prepared. (This date will not necessarily be the effective date of the award; i.e., previously disallowed claim or terminated award, reopened within the statutory period, may result in an effective date of award prior to the date of reopened claim.)

(c) **All Other Awards.** This item will also be used for entry of the date of claim by an apportionee when a factor in determining effective date on the apportionee award, and, on the amended awards, to record the date of receipt of claim for increase.

(8) **POWER OF ATTORNEY.** Enter the two-position numeric code for any applicable power of attorney. Equivalent alpha designations are also acceptable as follows: AL, ARC, AVC, VFW, DAV, JWV, MOPH, AMVETS, and PVA.

(9) **SUSPENSE DATE.** An appropriate suspense date will be established from the current date automatically by the system from the end product assigned. Should the generated suspense date, as shown below, be inappropriate for a particular issue, then enter the suspense date desired for the issue. If entered, the suspense date must be at least 10 calendar days in the future and can be no more than 1 year in the future. *NOTE: The suspense date must be entered if a diary control is to be established by using the FUTURE REASON field.*

AUTOMATIC TARGET EPC SUSPENSE DATE

EPC	DATE	EPC	DATE
110	+ 90	190	+ 60
120	+ 90	290	+ 30
130	+ 30	310	+ 90
140	+ 90	320	+ 60
150	+ 30		
160	+ 60		
170	+ 60	500-690	+ 30
180	+ 90	910-930	+ 30

(10) **SECTION/UNIT NUMBER.** Enter the applicable four-position section/unit number which is to be assigned responsibility for processing the issue; e.g., 211A.

(11) **FUTURE REASON.** Enter the applicable 30 series diary control when no master record future diary control can be established. The appropriate control code of the 30 series will be entered as follows:

Control Code	Description
[ ]	
31	Future Date Control. (See VAR 1342(B)(2)—Non-Service-Connected Tuberculosis.)
32	Future Date Control. (See par. 28.13—Estate of Incompetent.)
33	Future Date Control. (See par. 55.08—Service-Connected Unemployability.)
34	Future Date Control. (See pars. 25.23b(1) and 53.02g and par. 29 of the Rating Schedule—Open 100 Percent Evaluation.)
35	Future Date Control. (See par. 25.10a-Adjustments Under VAR's 1551 and 1556.)
[ ]	
39	Other

d. Completion of Screen 103 (Pending Issue Control). On the Ready screen completion of the fields PAYEE NUMBER, END PRODUCT, BENEFIT and FILE NUMBER is required for all payees. Completion of the field FULL NAME is optional for all payees. Completion of the field STUB NAME is optional for veteran (payee 00) but is required for all other cases.

(1) **NAME AND ADDRESS.** The claimant's name and address are displayed from the master record. Should any correction of the address be necessary enter 601 in the NEXT SCREEN field. Upon completion of entry of the required data on the screen, the 601 screen will then be displayed for correction of the address.

(2) **DATE OF CLAIM.** See subparagraph c(7).

(3) **POWER OF ATTORNEY.** See subparagraph c(8).

(4) **SUSPENSE DATE.** See subparagraph c(9).

(5) **SECTION/UNIT NUMBER.** See subparagraph c(10).

(6) **FUTURE REASON.** See subparagraph c(11).

(7) **NEXT SCREEN.** Enter END, S99, 601, or leave blank. When END and S99 are entered and when left blank, the S99 screen will be displayed. If PEST control was established by default processing because another processing command was entered; e.g., CADJ, then the initial screen requested will be displayed or the appropriate menu screen if no screen number was entered to enable continued processing of the issue.

e. Transfer-Out and Transfer-In Procedures

(1) When a folder is received for review in connection with a permanent transfer to another office, the following actions will be taken.

(a) Determine if there is a current pending issue control, including diary control established. If none, no further action is required.

(b) If there is an existing pending issue control, PCAN the issue. (See pars. 1.17 and 2.05a(2).)

(2) Upon receipt of a folder by transfer-in, a review will be made of the file and any pending issue will be established as appropriate under CEST/PEST procedures.

NOTE: When a folder is received and the prior station did not cancel an existing pending issue file control, that station's regional office number is displayed on the PO1 screen. That station must be notified to clear the control before the receiving station can establish control.

f. Special Control Procedure

(1) There will be certain instances when a tighter control is required than would be provided by Target System procedures. When the particular facts or situation relating to an individual claim justify a specific date or tight control, such as actions under 38 CFR 3.105(a), the control will be established by use of VA Form 21-693 (see par. 1.13). When used, it will be in addition to and not in lieu of the basic pending control procedures provided for above.

(2) When special control is established, the copy of VA Form 21-693 should be out-filed as specified in paragraph 1.09e. This readily identifies the existence of a special control.

[**g. Third-Digit Modifiers.** Because of the need to identify claims involving certain specific issues, third-digit modifiers for end products 110, 120, 140 and 160 have been established. Therefore, if a claimant asserts a disability arising under one of the listed conditions, use the following:

Modifiers	Issue
2	Radiation
3	POW Status
4	Delayed Stress Syndrome
5	Agent Orange Exposure

NOTE: End product modifier 6 is used by the Washington and Houston regional offices to identify foreign claims. This modifier is used with all end products.]

1.16 TARGET SYSTEM CLEARING OF PENDING ISSUE CONTROLS—PCLR

a. General. The following are the procedures for use of the PCLR command. This command is required to clear an existing pending issue control without award or disallowance (CAUT) action.

b. Ready Screen. Entry of the Full File key is required (payee number, file number, end product code, benefit type, and full name).

(1) **Existing Pending Issue File.** The system will first attempt to identify an existing pending issue control with the *exact* same key data as entered on the Ready screen. If a matching issue is located, the issue is located, the issue will be cleared from the Pending Issue File and credit will be taken for the pending end product.

(2) **Issue Not Located.** If a matching pending issue control is not located, then the 103 screen will be displayed. The date of claim and section/unit number must then be entered on the screen for credit to be taken for the issue. No other data field on the screen is to be completed.

1.17 TARGET SYSTEM CANCELLATION OF PENDING ISSUE CONTROLS—PCAN

a. General. An existing control can be canceled by use of PCAN, PCLR OR CAUT procedures. (See par. 1.16 re PCLR and par. 15.09 re CAUT procedures.)

b. Cancellation of Control (PCAN). The cancellation of the pending issue control without credit is to be accomplished by use of the PCAN procedure. Entry of the Full File key data on the Ready screen (payee number, end product code,

benefit type and file number) is required. Upon matching the pending issue, the issue will be deleted without any credit being taken.

1.17.1 TARGET SYSTEM CHANGING OF PENDING ISSUE CONTROLS—PCHG

a. **General.** An existing control can be changed by use of PCHG or CAUT procedure. (See par. 15.09 re CAUT procedures.)

b. **Change of Control (PCHG).** The change or correction of control data is to be accomplished by use of the PCHG procedure. Entry of the *Full File* key data on the *Ready* screen (payee number, end product code, benefit type and file number) is required.

c. **Pending Issue Control Data.** The pending issue control data which can be changed is limited to the following:

(1) **End Product.** If the end product code currently assigned is not appropriate, then enter the applicable end product code.

(2) **Power of Attorney.** If the currently assigned power of attorney code is inappropriate or blank, enter the power of attorney code or alpha equivalent for the power of attorney to be established. (See par. 1.15c(8).)

(3) **Section/Unit Number.** If the section/unit number currently assigned is not appropriate, enter the correct section/unit number.

(4) **Suspense Date.** If the suspense date becomes inappropriate for a particular issue, then enter the suspense date desired. If changed, the suspense date must be at least 10 calendar days in the future and can be no more than 90 days in the future.

NOTE 1: Any utilization of PCHG to alter control dates will increase the number of cases appearing in the maturing issue column of the W50 screen. Supervisors must assure that those cases are adequately screened to insure that they are routed to the most appropriate reviewer.

NOTE 2: The primary reason for altering control dates is to return a case for review for a specific reason; i.e., followup to VA Form [21]-3101, Request for Information, VA examinations, certain reductions in pension A&A. While the option to change control dates will give greater control flexibility to supervisors, management will be held responsible for assuring that WIPP reviews are not neglected.

d. **Amendments.** Amendment of any other data element in the PIF (Pending Issue File) is precluded. Issues with erroneous information in another field; i.e., payee number, must be canceled by use of the PCAN command and reestablished to reflect correct information.

1.18 REVIEW OF PENDING CLAIMS AND ISSUES

a. **General.** Reproduced control messages will be received from the DPC upon completion of the current cycle processing. The following messages will be in file number order by terminal digit.

(1) Reminder note bearing legend "Review" (which will be accompanied by a listing).

(2) Reminder note bearing legend "Diary Matured This Cycle."

(3) Reminder note bearing legend "Future."

b. **Handling of "Review Messages"**

(1) **Responsibility.** The "Review Message" will consist of two parts:

(a) Messages representing end products pending over 6 months will be delivered to the Adjudication Officer, or the Assistant, with a copy of the listing.

(b) Messages for end products pending 6 months or less will be delivered to the responsible section chief, together with a copy of the listing.

(2) **Selective Review.** The Adjudication Officer may also conduct selective reviews of pending issues. If the pending issues in any group of end products have consistently bettered the goal, the Adjudication Officer may elect to dispense with the review of the group during that review period.

(3) **Action**

(a) The folders will be secured unless the message or list for the previous cycle contains information which would indicate that no useful purpose would be served; i.e., the evidence necessary for final disposition is not likely to have been received.

(b) The folder will be carefully reviewed to determine whether:

1. All evidence necessary to adjudicate the issue is of record and thus final action should be taken; or

2. Followup action should be taken to obtain the missing evidence.

(4) **Disposition of Review Messages and Listing Sheets**

(a) The listing sheets and review messages will be retained by the Adjudication Officer or his/her designee.

(b) Review messages and listing sheets from previous cycles may be destroyed in accordance with Records Control Schedule VB-1, part I, 13-052.400 when not included in the current referral by the DPC, as this is an indication that final disposition has occurred.

(c) If final disposition cannot be effected, appropriate notations setting forth the reason will be made on the review message. No other action for control purposes is necessary since the review message or list will be processed automatically in subsequent monthly DPC cycles until the final disposition of the pending end product. The review message with the notations will be destroyed when final disposition has occurred.

c. **Handling of "Diary Matured This Cycle" Message.** This message is prepared by the DPC for those actions whose initial diary date expires during the current DPC processing cycle. The "Diary Matured This Cycle" messages will be referred for attachment to the folders and delivery to the Authorization activity. These messages will not be retained in the Authorization activity for pulling folders on a daily or cyclical basis.

d. **Handling of "Future" Messages.** The "Future" messages will be composed of control messages for the future scheduled actions coming due that were established under 30 series control codes. These messages should be referred to the Files activity for attachment to claims folders as soon as practical after receipt from the DPC.

e. **Cancellation of Control.** If, at any time during the processing of a folder, it is determined that a control exists in error, cancel the issue using PCAN procedures.

SUBCHAPTER IV. WORKFLOW

1.19 GENERAL

This subchapter provides an overview of personnel functions under VDT System claims processing and also establishes the workflow pattern for Adjudication Divisions.

1.20 TARGET CLAIMS PROCESSING OVERVIEW

Compensation, pension and chapter 34 and 35 educational assistance claims processing, using VDT's (Video Display Terminals), may encompass five different functions.

a. The first function, claims establishment, consists of establishing an original or supplemental claim as a pending issue, which puts the claim under control. See M21-1, Part II, Chp 1 for claims established procedures.

(1) During claims establishment, the file number will be entered or assigned by system.

(2) The end product code, payee number, benefit indicator, stub name (in beneficiary cases) and payee address (in original clai. must be entered by the operator during claims establishment.

(3) Other items, such as Social Security number and date of birth, may be required to identify and/or update the BIRLS records.

b. The second and third functions consist of development and data entry.

(1) Development/data entry clerks will analyze the claim for completeness and request, through use of the VDT, any necessary development.

(2) All requested development, whether generated or not, will be recorded through use of the CDEV command.

(3) Development/data entry clerks will also update BIRLS data and enter basic claims data such as simple dependency factors when available with the claims documents or as received as a result of development.

(4) Following rating actions, they will also enter uncomplicated ratings, such as those involving a single effective date and combined evaluation without special monthly compensation.

(5) It is expected that other actions, VA Form 10–7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action, processing, development, etc., will continue to be performed by the development/data entry clerk. Target inquiry will be used as the primary means for providing response to VA Form 10–7131 requests for information and to determine need for control for reduction or paragraph 29 or 30 consideration.

(6) For education actions, the education clerk may perform development and data entry functions.

c. Adjudication and authorization of claims make up the fourth and fifth functions.

(1) An adjudicator will request the file if necessary, make any additional data entries required, review the generated award for accuracy of all data entered, sign the award and refer it to an authorizer for approval and signature and to take payment authorization action on screen 501.

(2) The adjudication and authorization functions for education claims may also be performed by education claims clerks when permitted by M22–2, part I, chapter 2.

1.21 CONTROLLED ISSUES VERSUS ONE-TIME DISPOSITIONS

a. All mail received in the unit should be given to the development/data entry clerk who will perform an initial screening to identify claims mail and those claims and information requests which are one-time actions designated for processing without the folder, such as income and dependency changes and VA Form 10-7131.

b. Establish all claims (CEST/PEST0 within 7 [calendar days] after receipt by the regional office or (VAC).

c. Adjudication shall review any mail that does not require development or referral to the rating board to determine if it can be worked immediately without the folder. Made every effort to process as much mail as possible without the folder.

d. Use the S99 screen to record movement of the claim (DISP) to and from the rating board. DISPing to and from other locations is optional.

e. For educational assistance, the criteria in M22–2, part I, chapter 2, will apply.

1.22 PERSONNEL REQUIREMENTS

a. Under the Target System it is essential to establish control of an issue at the earliest possible time; however, the person establishing controls must be readily able to identify such factors as type of claim, payee number and end product.

(1) Performance of the Development activity currently requires the clerk to analyze and develop claims covering the full range of compensation and pension benefits. Therefore, neither the screening of mail to identify claims nor the system requirements for entry of claims establishment data impose a substantive responsibility not already required for the position.

(2) Claims establishment for original (CEST) and supplemental (PEST) issues will be accomplished by the development clerk activity.

b. Personnel currently designated as development or claims clerks and education clerks will perform the development function (CDEV command), and, to the extent approved by local management, data entry (CDAT command) in addition to data entry described in paragaph 1.20b(3) above.

c. During the adjudication/authorization functions, all awards and disallowances, whether based on CDAT or CADJ commands, are subject to review and approval by a burial clerk or adjudicator and an authorizer; i.e., a person designed by the Adjudication Officer as having authority to approve such awards as provided in chapter 15.

[ ]

CHAPTER 4. AUTHORIZATION RESPONSIBILITY AND CLAIMS PROCESSING

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CHAPTER 4. AUTHORIZATION RESPONSIBILITY AND CLAIMS PROCESSING

SUBCHAPTER I. AUTHORIZATION RESPONSIBILITY

4.01 GENERAL

The Adjudication Division is composed of two major elements: an Authorization activity and a Rating activity. The Authorization activity is, in most cases, divided into units. The Rating activity is composed of one or more rating boards. Information about the organization and function of the rating boards is in chapter 45.

4.02 AUTHORIZATION RESPONSIBILITY

a. The Authorization activity is responsible for determinations as to:

(1) Active duty periods (38 CFR 3.6);

(2) Character of discharge (par. 14.01);

(3) Line of duty (par. 14.03);

(4) Willful misconduct and vicious habits (par. 14.04);

(5) Wrongful and intentional killing, homicide (ch. 14, subch. II);

(6) Findings and presumptions of death (ch. 14, subchs. III and IV);

(7) Dependency and relationships (chs. 8 and 10);

(8) Income and net worth (ch. 9); and

(9) Burial/plot interment allowance (ch. 43).

b. In addition to the basic eligibility determinations, the Authorization activity is also responsible for:

(1) The development of evidentiary basis of claims;

(2) Adjudication of disability and death claims for compensation and pension;

(3) Furnishing information to claimants, their duly authorized representatives, and others;

(4) Providing and documenting procedural due process; and

(5) Performing other duties as may be assigned.

SUBCHAPTER II. CLAIMS PROCESSING

4.03 GENERAL

a. **Assistance to Claimants.** All reasonable assistance will be extended to claimants in meeting the evidentiary requirements necessary to establish their claim under the applicable laws and regulations. They will be given every opportunity to establish entitlement to the benefits sought, including complete procedural and appellate rights. Information and advice provided will be complete and in words which the average person can understand. All sources from which information may be elicited should be thoroughly developed prior to making decisions affecting entitlement.

b. **Date of Receipt Stamp.** Claims, applications and associated evidence are to be date stamped upon receipt in the regional office. The stamp imprint will be placed in accordance with paragraph 1.08b.

(1) The use of a receipt stamp in adjudication will not be routinely required. However, if an unstamped document is received in the Adjudication Division, the Adjudication Division shall date stamp it.

(2) The Adjudication Officer, or designee not below the level of Unit Chief, may require the use of the receipt stamp to document unusual delays in the receipt of documents in the Adjudication Division.

c. **Initial Screening.** To give efficient service to claimants, all applications, claims, correspondence and evidence will be immediately screened to determine whether:

(1) The claim, because of its nature or the facts, warrants expedited action;

(2) A prima facie claim is established which can be immediately referred to the rating board (see pars. 22.08, 34.05 and 34.06);

(3) A claim is incomplete and requires further development; or

(4) The claim warrants immediate denial.

d. **Signature of Claimant**

(1) **Unsigned Application.** If an application is unsigned, a copy will be made and retained as the file copy while the original is returned to the claimant for signature. The file copy will be considered as an informal claim under 38 CFR 3.155.

(2) **Signature by Mark.** Forms with signatures by mark or thumbprint must be witnessed by two persons who give their address. However, if the mark is witnessed by a VA employee or notary public (or other person having authority to administer oaths for general purposes), only the certification of the employee, notary or other person is required (38 CFR 3.113).

(3) **Signature by Pencil.** A penciled signature is acceptable.

e. **Defective or Incomplete Application Forms.** In the event an application form is properly executed (signed) but is so incomplete that development for the specific missing information is not feasible, a copy will be made and retained as the file copy. A pending issue file will be maintained under paragraph 7.01b. The original application will be returned to the claimant with a request to complete the indicated items checked in red. The claimant will be requested to return it along with any other required evidence. FL 21-96 may be used for this purpose.

f. **Informal Claim**

[(1) An informal claim is any communication or action which shows an intent to apply for benefits under laws the VA administers. If an original claim has not been filed under 38 CFR 3.160, the communication or action must identify the benefit sought (38 CFR 3.155).

(a) If a claim is not filed on the prescribed form (e.g., VA Form 21-526, Veteran's Application for Compensation or Pension, or 21-534, Application for Dependency and Indemnity Compensation or Death Pension by a Surviving Spouse or Child), it is an informal claim. EXAMPLE: A telephone call from a claimant indicating an intent to apply for benefits is acceptable as an informal claim for date of claim purposes, but do not control the issue. See paragraph 1.15c(7). Send the proper application form to the claimant and tell the claimant to return the completed form within 1 year to receive benefits from the date the telephone call was received.

(b) An unsigned application is an informal claim. Make a copy of the unsigned application for file purposes and return the form to the claimant for signature. Use the file copy for date of claim purposes but do not control the issue. Concurrently develop for other necessary evidence under paragraph 4.04. Tell the claimant to sign and return the form within 1 year to receive benefits from the date the informal claim was received.

(2) Additional informal claims provisions for reopening claims or for an increased evaluation based on reports of examination or hospitalization by the VA or military are found in 38 CFR 3.157(b). These types of informal claims do not need to specify the exact benefit sought.

(a) Evidence of examination or hospitalization in a VA or uniformed services health care facility is an informal claim for an increased evaluation for a condition *previously* service connected (38 CFR 3.157(b)). A notice of hospitalization may not suffice as an informal claim where a veteran service connected for one disability is hospitalized for a different disability for which service connection has not been granted. If the medical evidence shows treatment for the service-connected disability or manifestations of such disability, the provisions of 38 CFR 3.400(o) pertaining to the 1-year limitation for receipt of a claim do not apply. Accept the date of admission for treatment of a service-connected disability as the date of claim for increased evaluation. Control the claim under paragraph 7.01b.

(b) Accept as an informal claim evidence of examination or hospitalization at a VA or uniformed services health care facility if a claim specifying the benefit sought is received within 1 year of such treatment. Liberally interpret reasonable probability of a valid claim. If, after final adjudication of an original claim, subsequent communication from a claimant alleges facts that present the reasonable probability of a valid claim, accept the claimant's written allegations as a reopened claim or a claim for increase. The claimant need not specifically state that it is a claim or identify the exact benefit sought. Control the claim under paragraph 7.01b. (38 CFR 3.102; M21-1, pars. 4.03a, 27.06b, and 55.01)]

g. **Applicability of Administrative Time Limitations**

(1) Evidence requested from the claimant will be controlled for 60 days, unless otherwise provided. (See pars. 7.01b and 16.03.)

(2) Requests for evidence from a third party will be controlled for receipt within 60 days, unless otherwise provided. If the evidence is not received within the control period, use the appropriate Target development paragraph to inform the claimant that we have not received the evidence we requested and that the claimant should obtain it. Continue the control for an additional 60 days. (See pars. 7.01b and 16.03.)

(3) If we request required evidence from another department or Federal Government Agency (e.g., VAMC reports, service department records), the statutory (38 CFR 3.109) and administrative time limitations do not apply. Controls, and followup procedures will continue until the evidence is received or a final reply is received stating the records cannot be located.

(a) The claimant is to be specifically advised of the service departments' handling of the VA requests for evidence. Followup requests under paragraphs 6.04d and 6.06 are to be made.

(b) Claimants may be requested to submit service records; however, their failure to furnish service records is not considered abandonment under 38 CFR 3.158(a). An administrative/record purpose disallowance is not permitted under the above-cited circumstances.

h. **Returned Correspondence.** If any correspondence, including award letters or requests for evidence, is returned undelivered to the claimant, review the file to determine if we used the claimant's current address. If the address was current, disallow any pending claim under code 21, address unknown (par. 16.02b). File the returned correspondence in its original envelope to remain on top of all other file material. If a change of address is subsequently noted, review the original correspondence for relevancy. If still relevant, send the correspondence to the claimant at the new address. If the address used was not correct, it will be re-sent.

i. **Claims Filed and Lost—Effective Date.** If we lose a claim, the employee having knowledge of the facts shall prepare a statement for the file. The employee and the employee's supervisor shall sign the statement. Base the effective date of the duplicate claim on the date of receipt of the lost claim (as established by the statement). Remember that a claim is not filed until finally left with the VA.

4.04 SIMULTANEOUS DEVELOPMENT AND NOTICE TO CLAIMANT OF DELAYS

a. **Simultaneous Development.** If there is reasonable probability of a valid claim, make every effort to simultaneously develop for all the necessary information and evidence needed to finally adjudicate. This requires a careful analysis of all issues involved and the best sources of evidence necessary to resolve them. A liberal interpretation will be accorded "reasonable probability" of a valid claim for this purpose.

(1) **Pension Claims.** Because dependency is an entitling factor to a claim for pension benefits, all appropriate development for dependency information should be undertaken with initial development actions.

(2) **Compensation Claims.** Since dependency is not a factor for a claim for compensation benefits, develop for dependency information upon receipt of a rating showing a combined evaluation of 30 percent or more. However, simultaneous development for dependency is to be undertaken when it is apparent that the veteran's service-connected disability will warrant at least a 30 percent evaluation. (For example, veteran lost both legs in service.) If a veteran is rated 30 percent or more, the award letter must include information concerning possible additional benefits for dependents. No control should be established or maintained in these instances.

b. **Notice to Claimant When Action Is Delayed.** Each claimant will be kept informed as to the reason for any undue or excessive delay in the adjudication of his or her claim. If delays occur and the claimant is not aware of the reasons, write to the claimant and explain the delay using either a dictated letter or a post card (FL 30). This promotes good public relations and eliminates inquiries requiring replies which generally delay final disposition of the claim.

4.05 CORRESPONDENCE RELEASED BY ADJUDICATION

[a. Correspondence prepared by the Adjudication Division is released under the authority delegated to the Adjudication Officer or, in the absence of the Adjudication Officer, the person designated as Acting Adjudication Officer. Correspondence prepared and released by the Adjudication Division will be for the signature of the Adjudication Officer.

(1) The Adjudication Officer will delegate authority to adjudication personnel to sign correspondence for release as deemed appropriate.

(2) Adjudication Division correspondence whether generated by the DPCs (Target System, Xerox 9700, etc.), form letter, or dictated letter shall be signed with the designations of the Adjudication Officer's name and title.

NOTE: If there are compelling reasons, such as personal threats against the security of the Adjudication Officer or familymembers, the regional office Director may authorize Adjudication Division correspondence to be signed with the words "VETERANS ADMINISTRATION" (in all capital type) instead of the Adjudication Officer's name.]

b. Any notification by form or dictated letter of the grant or denial of benefits must be reviewed and a copy filed in the claims folder before the claims folder is returned to the file bank. Documentation that procedural due process was provided is a necessary and material function of the Adjudication Division.

4.06 MAINTENANCE OF ADJUDICATION MANUALS, REGULATIONS, PROGRAM GUIDES, CIRCULARS, ETC.

Each Adjudication employee is responsible for maintaining his/her own set of regulations, manuals, program guides, circulars, etc. Upon transfer of the employee from one station to another, these guides will be retained by the employee. The transferring station will pack and ship the above material to coincide with the arrival of the employee at the new station or as soon thereafter as possible.

CHAPTER 8. RELATIONSHIP—MARITAL AND PARENTAL

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CHAPTER 8. RELATIONSHIP--MARITAL AND PARENTAL

SUBCHAPTER I. MARITAL RELATIONSHIP

8.01 POLICY

When required in a claim for benefits, the fact of marriage will be established as provided in VAR 1205 and this chapter. [ ] *NOTE: Common-law, tribal and proxy marriages must be established as provided in paragraphs 8.04 and 8.05.*

a. **Assistance to Claimants.** When proof of validity of a marriage is required, the claimant will be furnished with any information in the VA records which may help in procuring evidence to complete the claim, such as the name of the former spouse, date and place of marriage, whether the marriage was dissolved by death or divorce, and the date and place of dissolution.

b. **Time Limit for Receipt of Marital Evidence.** In all requests for evidence to establish a valid marriage, the claimant will be advised that if the required evidence cannot be furnished the VA should be informed, with an explanation of the reason. If such an explanation is received within the time limit for submission of the evidence, all reasonable efforts to obtain the evidence will be made by the VA through correspondence and, if necessary, through development by field examination.

c. **Basic Evidence Requirements.** The existence of a marriage will be accepted on the basis of:

(1) Proof of the fact of marriage, either ceremonial or common law, which meets the requirements of VAR 1205(A); and

(2) The claimant's statement as to legal capacity to contract such marriage, either on the formal claim or in a separate certified statement such as VA Form 21-686c, Declaration of Marital Status, showing the date, place and circumstances of dissolution of any prior marriages provided that such facts, if required to be corroborated by formal proof of divorce or death, would warrant acceptance of the marriage as valid. (VAR 1205(B))

d. **Proof of Marriage.** VAR 1205(A) should not be interpreted as enumerating exclusive types of evidence acceptable as proof of marriage. When the proof as set forth in the regulation cannot be obtained, other proof as the circumstances of the case permit, may be accepted as establishing the fact and date of marriage.

e. **Legal Capacity of Contracting Parties**

(1) **General**

(a) Record proof of dissolution of prior marriages will not be routinely required. The adequacy of the statements required under subparagraph c(2) above, to establish the termination of prior marriages under VAR 1205(B), will be determined in accordance with the facts presented in each case. Mere allegations that there was a divorce or that a prior marriage was dissolved by death of the former spouse will not suffice. The name of the prior spouse, date and place (State) of divorce or death and such other data pertinent to the issue should be furnished, either in the formal claim or by such supplemental or clarifying statements as deemed necessary.

(b) Death of a prior spouse may also be established, after development and a finding of fact of death may be made in accordance with chapter 14, subchapter IV.

(c) Basically, if the facts disclosed would support a finding that both parties were legally capable of contracting marriage at the time of the marriage in question and there is no other reason to question the validity of the marriage in issue, record proof of dissolution will not be required. In this regard, when the factual data as to a prior divorce [are] complete, the claimant's statement that the divorce was absolute and did not bar remarriage will generally be adequate. (But see par. [8.08] on the effect of divorce decrees in disability cases.)

(2) **In all disability cases,** record proof of dissolution [is] required [ ] when the facts as presented are insufficient to resolve the issue; e.g., when there [are] conflicting data in the claims folder, uncertainty or reasonable doubt as to restrictions or prohibitions on remarriage included in a divorce decree, or inadequacy of the decree or jurisdiction of the court to effect dissolution of the prior marriage. The claimant will also be informed that if such evidence is unobtainable, a certified statement to that effect should be furnished together with a full explanation of the attempts made to obtain it, in order that a determination may be made in accordance with paragraph 8.03.

(3) **For death cases,** see paragraph 8.07.

f. **Effect of Court Judgments.** In death cases, marital relationship may also be established by a judgment of a Federal court in a suit in which the United States was a party.

(1) The court's decision on questions of remarriage of [surviving spouses] will be followed in determining entitlement for the purposes of paying pension compensation or DIC even though the court determination may relate to other benefits such as Social Security, Federal Employees' Compensation, etc.

(2) It is immaterial whether the decision was [made] following a trial on the merits as distinguished from a stipulated judgment. (VAR 1214)

(3) A court's decision holding that a [surviving spouse] may not be considered as remarried does not remove the necessity for a determination by the VA that payment of death benefits is not otherwise precluded. For example, a [surviving spouse] may nevertheless be barred under VAR 1050(B) (2) from payment of death pension, compensation or DIC by reason of having lived as the spouse of another after September 19, 1962. (Par. 8.06)

8.02 REQUESTS FOR PUBLIC RECORDS

a. **General.** VA Pamphlet 20-70-2, "Public Records Directory," provides a listing of the offices charged with the custody of public records of births, deaths, marriages and divorces. Use should be made of this pamphlet in connection with any development undertaken to obtain public records of marriage or dissolution of marriage either by divorce or death. *NOTE: The District Counsel will be requested to furnish information regarding recognition of common-law marriages when such information is required.*

b. **Foreign.** When it is necessary to request foreign records through the Department of State, the requests will be directed as follows:

(1) Birth and Marriage Records

Passport Office
Department of State
Washington, D.C. 20524

(2) Death Records

[Bureau of Consular Affairs]
Department of State
Washington, D.C. 20520

8.03 JURISDICTION OVER DETERMINATIONS

a. **Determinations Made in Adjudication Division.** Factual questions are exclusively for determination by the Authorization activity. However, the authority of personnel of the Adjudication Division is not limited to resolution of factual questions in domestic relation issues.

(1) **Extent of Adjudicator's Decision Authority.** Except as limited by subparagraph b below, determination of issues necessary to establish entitlement to benefits is to be made without submission to the District Counsel when there is no doubt as to the legal effect of the facts found or when it is apparent that the situation is identical or the circumstances involved are on "all fours" with those in a case in which a formal opinion has been [made] by the General Counsel, or by a District Counsel and approved by the General Counsel.

(2) **"All Fours" Precedent Defined.** A case will be considered "on all fours" when the facts and questions of law involved are substantially the same. In other words, the cases need not be identical except with respect to material facts and controlling legal principles.

(3) **Precedent File.** Each Adjudication Division will maintain a file of precedent decisions and an index sufficiently comprehensive and cross-referenced as to afford ready identification of "all fours" opinions. It will be the responsibility of the Adjudication Officer to assure that such precedents are currently in effect.

(4) **Format.** Determinations will be prepared as memorandums for file in accordance with paragraph 14.34, for approval by the Adjudication Officer or his/her designee, who shall be a supervisor not lower than a section chief. This official is not vested with authority to make determinations of domestic relations questions except as provided herein.

b. **Questions Requiring Submissions for Legal Opinions.** Domestic relations questions involving the following types of determinations will be submitted for legal opinion in accordance with subparagraph c below:

(1) Issues as to discontinuing gratuity payments by reason of ostensible remarriage of a [surviving spouse] (when periods prior to September 20, 1962, are involved) or ostensible marriage of a child (see par. 8.06).

(2) Restoration of benefits to a [surviving spouse] or to or for a child terminated by reason of marriage, on the basis of a void marriage or when basic authority of the court to issue an annulment or divorce decree is questionable or there is evidence indicating probable fraud on the court or collusion of the parties in the procurement thereof. (See pars. [8.09] and [8.10].)

(3) Unusual situations, such as those involving the law of two or more jurisdictions or of a foreign country.

[(4)] Questions involving marriage by proxy. (See par. 8.05b.)

[(5)] Questions concerning domestic relations involving legal considerations not determinable under subparagraph a above.

NOTE: When the provisions of VAR 1206(C) as to a foreign divorce are applicable, submission for a legal opinion under subparagraph (3) will not be required.

c. **Submissions to District Counsel.** If after complete development (including any necessary field examination), a domestic relations question requires referral to the District Counsel under subparagraph a or b, request for a legal opinion will be made in memorandum form, setting forth the question upon which an opinion is desired, together with an accurate statement of the pertinent facts involved. The request accompanied by the folder will be addressed to the District Counsel for the station concerned, except that the Manila and Washington regional offices will submit Philippine domestic relations questions directly to the General Counsel.

8.04 DEVELOPMENT IN COMMON-LAW MARRIAGE CASES

a. **Ceremonial Marriage Claimed.** When a ceremonial marriage has been claimed, but has not been proved, consideration will be given to whether requirements for common-law marriage have been met. The claimant will be asked for evidence of the "marriage agreement," avoiding the use of the term "common-law marriage" which may be offensive.

(1) VA form letters will not be used for this purpose, but instead a dictated letter will explain that the claimant should submit a statement on VA Form 21-4138, Statement in Support of Claim, setting out in detail all of the facts and circumstances concerning the relationship, such as;

best copy available

(a) the agreement between the parties at inception of their cohabitation,

(b) the period of cohabitation,

(c) places and dates of residence, including short periods, and

(d) whether or not children were born,

(e) whether the parties were members of any church or organization as husband and wife, and

(f) whether the parties had jointly entered into any business transaction or jointly executed any legal document, or had held title jointly to any real estate.

(2) In the case of a veteran claiming a spouse, a similar statement from the spouse will be requested. VA Form 21-4170, Statement of Marital Relationship, should be furnished for this purpose.

(3) In both live and death cases, VA Form 21-4171, Supporting Statement Regarding Marriage, should also be requested of two or more persons who know, as the result of personal observation, the relationship which existed between the parties, including the periods of cohabitation, places of residence, whether they held themselves out as husband and wife, and whether they were generally accepted as such in the communities in which they lived.

(4) In the event that children were born of the relationship, the claimant will be requested to furnish the birth certificates of such children, even though such evidence would not otherwise be required.

b. Common-Law Marriage Claimed. When a common-law marriage is claimed by a [surviving spouse], the claimant will be requested to establish a prima facie case of marriage by completing VA Form 21-4170 and having VA Forms 21-4171 completed by two or more persons who know, as a result of personal observation, the relationship which existed between the parties. If children were born of the relationship, the claimant should furnish their birth certificates. A veteran claiming a common-law marriage will be required to submit evidence as indicated in subparagraph (1) above.

c. Lack of Residence in State Recognizing Common-Law Marriage. In the adjudication of any disability claim in which it is shown that the parties to a claimed common-law marriage have, at all times during their cohabitation, resided only in jurisdictions which do not now recognize common-law marriages and have not recognized such marriages since the time of the inception of their cohabitation, the claim based on common-law marriage will be disallowed on a factual basis without submission for a legal opinion. (Par. 8.03a.) For determinations in death claims, see also paragraph 8.07.

8.05 TRIBAL MARRIAGES—PROXY MARRIAGES

a. Tribal Marriages. Whenever it is claimed that a marriage was celebrated in accordance with tribal custom, the best available evidence will be obtained as provided below for determination in accordance with paragraph 8.03:

(1) Affidavits from persons who were present showing that both parties were pagans at the time of the marriage; the name of the tribe; the date, place, and character of the ceremony; the name of the person who performed the ceremony, and whether he or she is alive or deceased.

(2) An affidavit should be obtained from the person who performed the ceremony, if living, showing that such ceremony was performed and stating the authority therefor.

(3) If either party had a Christian name, that fact should be explained and evidence obtained to show whether both parties were in fact pagans.

b. Proxy Marriages. Whenever it is necessary to establish the validity of a marriage performed by proxy, the best available evidence will be obtained and legal opinion requested.

8.06 CONDUCT WARRANTING INFERENCE OF MARRIAGE OR REMARRIAGE

a. General

(1) [Surviving Spouse(s).] A [surviving spouse's] claim for death benefits will be denied when, since the death of the veteran and *subsequent to* September 19, 1962, she/he has lived with another person and held herself/himself out openly to the public to be the spouse of such other person. (VAR 1050)

NOTE: Public Law 87-674 (38 U.S.C. 101(3)) substituted a statutory provision for the former administrative criteria requiring discontinuance of benefits when there was an assumption of marital status without evidence of a legal marriage. The statutory bar is applicable to relationships in existence on September 19, 1962 (effective date of the law) or which commenced thereafter.

(a) Reputation in the general community is *not* a requirement for application of the bar to benefits nor is the existence of an impediment to marriage material. [ ] On the other hand, there is no requirement that there be a determination of absence of an actual marriage before invoking this bar.

(b) When a case is routinely encountered in which benefits are being paid based on a legal opinion that, by reason of lack of reputation of marriage or the existence of an impediment, the evidence did not warrant an inference of the [surviving spouse's] remarriage, it will be determined whether the relationship continued to exist after September 19, 1962. If so, any necessary development will be undertaken to permit a determination under the current regulations and procedures.

(c) Cases involving ostensible remarriage of a [surviving spouse] prior to September 20, 1962, will be governed by the same rules applicable to ostensible marriages of children as stated in subparagraph (2) below and will require submission for a legal opinion as provided in subparagraph c(1) below, provided there was a termination of benefits or cessation of the relationship prior to that date. (But see par. [8.10b].)

(2) **Children.** For administrative purposes, a child will not be considered unmarried and an inference of marriage may be held to exist when each of the following is established:

(a) A cohabitation by the child with another person as [husband] and wife;

(b) A "holding out" by the two persons to the general community in which they reside that they are husband and wife (which generally is embraced in the requisite cohabitation);

(c) A general reputation in such community that they are married to each other; and

(d) There is no evidence of an impediment, such as a prior subsisting marriage of the cohabitant.

b. **Development.** In the evidentiary evaluation of these cases, the claimant always has the burden of showing entitlement to the benefit claimed even though the conditions of the claim be such as to require sastisfactory evidence that what might have happened has not taken place.

(1) If adequate, specific information is received from the apparently reliable source that a claimant's conduct has provided a reasonable basis for an inference that a marital relationship exists, the claimant will be advised of the nature of the information received, the effect of a finding of the existence of such relationship and of their right to furnish evidence, to have a personal hearing and to be represented.

(2) Concurrently, a field examination should be requested to obtain the claimant's statement regarding the alleged marital relationship and to obtain such other development as may be necessary for a determination including evidence as to the date a marital relationship commenced.

c. Determinations

(1) **By Submission for Legal Opinion.** In all cases involving children, request will be made to the District Counsel (General Counsel, in Philippine cases) for a legal opinion as to whether the claimant's conduct warrants an inference of marriage. The submission will include a request that if inference of marriage is warranted, the opinion will provide the date from which the relationship may be inferred.

(a) If benefits were being paid for the child in its own right, payments will be terminated (reason code 15) effective the first day of the month in which the relationship began.

(b) If additional benefits were being paid on account of the child as a dependent, the termination or reduction will be effective the end of the year in which the relationship began unless an earlier scheduled ending date (age 18, and of school or age 23) will prevail as provided in paragraph 24.16b(2). (VAR 1500(N))

(2) **By Adjudication Division.** The factual determination in cases involving a [surviving spouse's] conduct subsequent to September 19, 1962, will be made by the Adjudication Division in a formal decision as provided in paragraph 14.34, for approval by the Adjudication Officer or designee not below the grade of section chief, stating that the veteran's [surviving spouse] has or has not lived with another person and held herself/himself out openly to the public to be the spouse of such other person.

(a) The determination will also include the specific date such relationship began, if subsequent to September 19, 1962, or a statement that the relationship existed on and continued after that date, whichever is appropriate.

(b) Payments to the [surviving spouse] will be terminated (reason code 15) effective the first day of the month in which the relationship began or September 20, 1962, whichever is the later. (VAR 1500(N))

d. **Recoupment of Overpayment.** When additional benefits are payable for periods prior to the date of termination (as determined under subpar. [c] (2)(b) above), any overpayment for periods after that date will be recouped from such additional amounts payable. To effect the offset, the award authorizing the additional benefits must reflect *all* prior payments from the effective date of the award through the date of last payment to the claimant.

8.07 DETERMINING MARITAL STATUS IN DEATH CASES

a. **General.** Development to establish the acceptability of the marriage of a [surviving spouse] claimant to the deceased veteran will not be undertaken unless such relationship will meet the requirement that it had occurred prior to the applicable delimiting date or existed for the required duration period. (VAR 1054)

(1) Special note must be made of the provision that this requirement may be satisfied without any restriction as to date or duration of marriage if a child (including a posthumous child) was born of a *valid* marriage.

(a) When this provision may apply, any development required to establish the fact (and date) of marriage will be undertaken.

(b) The status of ["surviving spouse"] would be considered as established as of the date of the veteran's death and the effective date of an award would, of course, be controlled by the date claim was filed.

NOTE: See also VAR 1052 and [subparagraph] c below, regarding consideration of a child born of a "deemed valid" marriage.

(2) The requirements as to date and duration of marriage must also be met as a prerequisite to consideration of the issue of continuous cohabitation (VAR 1053; see also par. 8.11d(2)) or of continued status as [surviving spouse] (VAR 1050; see also pars. 8.06 and [8.09]).

b. **Development**

(1) **Fact of Marriage.** That there was, in fact, a "marriage" should be established by evidence acceptable under VAR 1205(A) (see par. 8.01d). For determination as a factual question by the Adjudication Division, see paragraph 8.03a.

(2) **Valid Marriages.** When a [surviving spouse] claimant has established the fact of marriage, its validity may be established by the claimant's statement acceptable under VAR 1205(B) as to the dissolution of the prior marriages of either spouse (par. 8.01c(2) and e). If the requirements of VAR 1205(B) are not met by adequate information in the application or an accompanying statement, the claimant will be requested to furnish either:

(a) Record proof of the dissolution of prior marriages or;

(b) Her/his certified statement setting forth the details as to dissolution as provided in paragraph 8.01e or subparagraph c below, as appropriate.

c. **Deemed Valid Marriage.** A claim will not be disallowed merely because a [surviving spouse] claimant is unable to furnish a statement under VAR 1205(B) to establish the dissolution of the prior marriages of either spouse, or because of the existence of any other impediment to a valid marriage without development under this paragraph.

(1) Under the provisions of VAR 1052, a claimant's marriage may be deemed valid despite the existence of an impediment, provided:

(a) The marriage occurred 1 year or more before the veteran died or existed for any period of time if a child was born of the marriage or was born to them before the marriage, and

(b) The claimant entered into the marriage without knowledge of the impediment, and cohabited with the veteran continuously from the date of marriage to date of death, and

(c) Another claimant has not established entitlement as the legal [surviving spouse] to gratuitous VA benefits, other than accrued amounts due and unpaid the veteran at the time of death.

(2) In these cases, the claimant will be requested to furnish a certified statement showing whether she/he had knowledge of any impediment at the time of marriage to the veteran, together with a full explanation of all the circumstances.

d. **Determinations.** Determinations as to deemed valid marriages will be made in the Adjudication Division in accordance with the following subparagraphs:

(1) **Legal Impediment Defined.** The term "legal impediment" as used in 38 U.S.C. 103(a) embraces the following in addition to the existence of prior undissolved marriages:

(a) Particular substantive conditions for validity, such as those as to age, mental capacity, marital status, consanguinity, etc.;

(b) Special formalities or external conduct required relating to the form of marriage (e.g., civil, religious, common law and tribal) and procedural prerequisites as to blood test, length of residence, marriage license, etc. (Adm. Dec. 979) (But see par. 8.05b, re proxy marriages.)

(2) **Knowledge of Legal Impediment.** It must be established that at the marriage to the veteran, the claimant did not know of the impediment; i.e., of factual circumstances or of a law prohibiting the particular marriage. The fact that such knowledge was later acquired (either before or after the death of the veteran) is not relevant. When all procurable evidence has been obtained, the issue will be determined upon a preponderance of the evidence.

(a) The matter of the claimant's knowledge of an impediment is a factual determination and will be made in the Adjudication Division, without need for resolution of the question as to whether a legal impediment actually existed.

(b) When a reasonable doubt exists, the policy that such doubt will be resolved in favor of the claimant will be observed.

(3) **Determination.** When the "deemed valid" question is resolved (favorably or unfavorably), the Adjudicator will prepare a formal decision using the format in paragraph 14.34. The Adjudication Officer may delegate authority to approve such finding to supervisors not lower than unit chiefs.

NOTE: When there are contesting claimants or the veteran was survived by another person who may be considered a probable claimant (as the "legal spouse"), see subparagraph e below.

(4) **Additional Actions on Unfavorable Decisions.** When the marriage cannot be deemed valid under the above criteria, any additional development for resolution of the issue of marital status; e.g., common-law marriage, will be required. Determination will then be made by the Adjudication Division or the case will be referred for a legal opinion, whichever action is appropriate under paragraph 8.03, before any disallowance.

e. Contested Claims. Pursuant to VAR 1052(D), payment of monthly benefits may be made to a claimant on the basis of a deemed valid marriage only if no claim has been filed by a legal [surviving spouse] found to be entitled to such benefits.

(1) When claim is filed by another person as [surviving spouse], full development will be required as a simultaneously contested case, in accordance with the provisions of chapter 36, with submission if required under paragraph 8.03, to the District Counsel to determine the *legal* [surviving spouse] if any. Administrative determination will then be made as to whether there is a statutory bar to payment to either or both contestants.

(2) When one claimant is found to be the legal [surviving spouse], but it is administratively determined that entitlement is not established due to lack of continuous cohabitation (par. 8.11), payment may be made to the other claimant on the basis of a deemed valid marriage to the veteran, if established. Otherwise, if the legal [surviving spouse] is found to be entitled to payment of death benefits (other than accrued benefits) or if payments to a legal [surviving spouse] have been made or would be made except for excessive income or remarriage after the death of the veteran, no separate determination will be required as to a deemed valid marriage.

[8.08] EFFECT OF DIVORCE OR ANNULMENT DECREE—DISABILITY CASES

a. General. The dissolution of a veteran's marriage by annulment or final decree of divorce requires, as appropriate, reduction or termination of the veteran's award when additional benefits are being paid for a spouse and/or the veteran's income would be excessive but for a dependent spouse. The effective date of such action will be the last day of the calendar year in which the marital relationship was terminated. (VAR 1501(D))

NOTE: An interlocutory decree of divorce is not a final decision terminating the marital status of the parties. Therefore, a veteran cannot be considered as "divorced" until a final decree has been made by the court. No action to adjust the award should be taken until the date of the final decree is determined. In such cases, the veteran should be requested to promptly advise us of the date of the final decree and the case controlled for adjustment following expiration of the period prescribed by State law for entry of the final decree.

b. Benefits Not Apportioned

(1) When a final divorce or annulment decree, regular on its face, is received, immediate action will be taken to adjust or terminate the veteran's award.

(2) The veteran's statement as to the fact of divorce or annulment will also be accepted as a basis for award or termination action when no apportionment would be affected.

c. Apportionment Cases. Apportionment for a spouse is subject to termination as of the first day of the month in which a divorce became final or an annulment decree was issued. (VAR 1500(A)) However, authorization action will be deferred and the due process predetermination notice furnished to the apportionee as provided in paragraph 14.36 unless the divorce or annulment has been reported by the apportionee. In addition to the requirements for due process notice to the apportionee, the veteran and/or apportionee will be notified of the following as appropriate:

(1) The adverse party will be advised of the right to introduce evidence to show cause why the decree should not be accepted as valid. Information identifying the court, the date of the decree, court file number, etc. will be included.

NOTE: Effect of Belated Protest From Adverse Party. An adverse party to a divorce or annulment decree is not prevented from showing cause at any time why effect should not be given to the decree. In any case of protest following adjustment of compensation or pension based upon the decree, the protesting party will be entitled to relief on the basis of the facts found.

(2) When information is received from the veteran indicating dissolution of marriage to the apportionee, but no evidence is submitted, both parties will be requested to submit proof within 30 days.

(a) If evidence is not received within that time, FL 21-107 will be addressed to the appropriate custodian of public records requesting a certified copy of the decree.

(b) If a negative reply is received from the custodian of public records and the veteran's spouse denies that the marriage has been dissolved, the veteran will be notified of those facts and advised that the apportionment will continue until acceptable evidence of dissolution is received.

(3) If the validity of a decree submitted is questionable, appropriate development and request for legal opinion, if required, will be obtained prior to effecting any discontinuance or adjustment of the veteran's award or that of the apportionee.

(a) Both the veteran and apportionee will be advised of the pending development and,

(b) The adverse party advised as provided above.

(4) Upon final determination or when evidence of dissolution does not require predetermination notice, immediate action will be taken to terminate the apportionee award and adjust the veteran's award as provided in paragraph 24.16 with full explanation of the action taken furnished to the parties including notice to the adverse party unless previously provided under due process procedures.

NOTE: When apportionment was for a spouse and children, the amount determined under VAR 1451 as payable for the children will be continued under a custodian award (par. 12.16).

d. **Dissolution of Marriage of a Child.** When there is a decree of annulment of the marriage of a child or the dissolution of a child's marriage by divorce or death of the spouse, the child will be considered as a dependent of a veteran, if otherwise eligible. (See par. 10.01.)

[8.09] ANNULMENTS, VOID MARRIAGES OR DIVORCES—DEATH CASES

a. **Policy.** A decree annulling the marriage of a child or remarriage of a [surviving spouse] entitles the claimant to restoration of benefits, if otherwise in order. On and after January 1, 1971, a [surviving spouse's] benefits may be restored upon a showing that her/his remarriage has been terminated by divorce or death of the spouse. On or after January 1, 1975, the dissolution of the marriage of a child by divorce or death of the spouse will not bar payment of benefits to or on account of such child. (See par. [8.10]) as to restoration and benefit entitlement restored.

b. **Marriage Alleged To Be Void.** When it is alleged that the marriage of a child or remarriage of the [surviving spouse] is void and an annulment decree has not been obtained, the specific evidence to be requested will depend on the facts in the individual case.

(1) After full development, the case will be submitted to the District Counsel (General Counsel, in Philippine cases) for legal opinion.

(2) If the District or General Counsel determines that the marriage or remarriage is void, the effective date of an award or increased award will be determined as of the date cohabitation ceased or the date of claim, whichever is later. (VAR 1400(U)(1) and (V)(1).)

c. **Annulment Decree Issued.** If restoration to the rolls is claimed because the marriage of a child or remarriage of the [surviving spouse] has been annulled, a certified copy of the court decree of annulment will be requested. A decree issued by a court having basic authority to issue annulment decrees will be accepted without a formal decision for the purpose of awarding, restoring or increasing benefits, if there is no evidence in the claims folder indicating that the decree was obtained by fraud or collusion.

(1) "Basic authority" means jurisdiction to grant an annulment decree. A decree of a court having such basic authority will not be questioned in the absence of apparent fraud on the court or collusion of the parties; nor will determinations be made in individual cases as to jurisdiction over the parties or sufficiency of the grounds on which the decree was [made].

(2) If there is evidence indicating fraud or collusion, certified copies of the petition to the court for annulment and the answer, or a transcript of the testimony, will be requested and full development undertaken.

(3) Questions as to whether the decree was obtained through fraud or collusion are mixed questions of fact and law and, after development, will be submitted to the District Counsel (General Counsel, in Philippine cases) for an opinion as to the legal effect.

(4) The determination will then be made by the Adjudication Division as a memorandum decision for file in accordance with paragraph 14.34 for approval by the Adjudication Officer or his/her designee, who shall be a supervisor not lower than a section chief.

(5) When a judicial decree of annulment is accepted, the effective date of an award or increase of benefits will be the date the decree became final if claim is filed within 1 year from such date; in all other cases, the date the claim is filed (VAR 1400 (U)(2) and (V)(2)).

[8.10] TERMINATION OF MARITAL RELATIONSHIP—RESTORATION OF BENEFITS

a. Evidence Requirements. A determination under VAR 1055 that benefits are payable on the basis that a [surviving spouse's] or child's marriage has been dissolved by divorce or death requires evidence establishing status as a [surviving spouse] under VAR 1050 as of date of death of the veteran or, in the case of a child, evidence establishing current status as the unmarried child of the veteran under VAR 1057. Development to establish the requisite relationship will be carried out taking into account evidence of record in connection with prior award action. In addition, the following evidence is required, for which request may be made by use of VA Form 21-8796, Statement of Termination of Marital Relationship:

(1) Statement of all of the claimant's marriages and indication of where, when and how each was dissolved.

(2) Statement of whether the claimant has ever filed an application or received VA benefits as spouse, [surviving spouse] or, in the case of a child, as child of any other veteran. If so, the name of such other veteran, [file] number and VA office location is to be stated.

(3) A certified copy of the public record of death or certified copy of the court's final decree of divorce covering dissolution of each marriage (in case of a [surviving spouse,] each marriage subsequent to the death of the veteran).

(a) A certified copy of the final decree of divorce issued by a court having basic authority to issue such decree will be accepted without a formal decision for the purpose of establishing dissolution of the remarriage as the basis for awarding or restoring benefits. (See pars. 8.03b(2) and [8.09]c(1) re "basic authority.")

(b) Cases of apparent fraud on the court by the [surviving spouse] or child or collusion of the parties will require development and handling as provided in paragraph [8.09c.]

(4) A report of income and net worth if pension is the benefit sought.

b. Cessation of Other "Marital Relationships." A claim for restoration to the rolls because of termination of relationship or conduct which resulted in a bar or restriction on payment of benefits (par. 8.06) cannot be filed until after termination of such relationship or conduct (VAR 1215).

(1) The claimant's certified statement will be requested showing date, place and circumstances of termination of the relationship or conduct which constituted the bar or restriction on payment of benefits. Full development of pertinent facts will be required including field examinations when deemed necessary.

(2) The Adjudication Division will make a determination, using the format in paragraph 14.34, in all instances in which the issue is termination of other "marital relationships" whether a favorable or unfavorable decision results. The Adjudication Officer has authority to approve such finding. This authority may be delegated to supervisors not lower than a [unit] chief.

(3) The effective date of an award based on termination of other "marital relationships" will be determined, without application of [38 CFR 3.114(a),] by the date of receipt of the application which must be filed after termination of the relationship. ([38 CFR 3.400(w)])

c. Benefit Entitlement Restored

(1) If the surviving spouse or child was receiving death compensation prior to the terminated marriage, the claim for restoration will be considered a claim for DIC ([38 CFR 3.702(a)).] If otherwise in order, DIC will be awarded and the claimant will be informed of the comparative rates payable as DIC and death compensation and that the greater benefit is being awarded. The claimant will also be informed of the right to be restored to the former death compensation benefit if the lesser benefit is desired.

(2) When the claimant was receiving protected death pension there is no right of election. Restored entitlement is only under the current pension law. [(38 CFR 3.701(a))]

[(a) Children in the surviving spouse's custody have entitlement only to the current pension law.

(b) Children out of custody, who are in receipt of protected pension, remain entitled to protected pension unless they elect the current pension. (See par. 42.03.)]

(3) The date of [entitlement] based on termination of remarriage of the surviving spouse or marriage of a child (except as provided in subpar. b above) will be the date of death of the claimant's spouse or the date his/her divorce decree became final if the claim is filed within 1 year of such date; otherwise the effective date will be the date of claim [(38 CFR 3.400(u) (3) and (4) and (v) (3) and (4)).]

d. Dual Entitlement—Right of Election. When development under subparagraph a above indicates the surviving spouse may have entitlement to death benefits because of death of more than one spouse, the XC-folder(s) of the other spouse(s) will be associated with the pending claim and the "Dual Case" procedures prescribed in paragraph 2.03d(1) will be followed. (See ch. 42, subch. V re children and two parent cases.) If review of the folders show there is entitlement to benefits in both cases, action will be taken as follows:

(1) **Election Assumed.** If entitlement in the companion case would not provide a greater benefit, the pending claim will be considered an election of benefits in the pending case and award action, if otherwise in order, will be taken.

(2) **Election To Be Requested.** If there is entitlement to a greater benefit in the companion case, award action will be taken in the pending case, if in order, but the surviving spouse will be informed of the right to elect the greater benefit.

(a) The election, if made, must be accompanied by a formal claim if one was not previously filed in the case.

(b) If the election (and claim, if required) is filed, the greater benefit will be awarded effective as of the earliest date of entitlement in that case in accordance with [38 CFR 3.400(c),] *subject to prior payments for the same period* in the other case. [(38 CFR's 3.658(b) and 3.700(b)(1))]

(3) **Notice to Claimant.** Regardless of whether a greater benefit may be payable in the pending case, the surviving spouse will be informed of the right to elect benefits in either case. The notice must furnish complete information as to the type of benefit and rate payable, based on the death of each spouse.

NOTE: There is no restriction on the right of election or reelection between cases. [(38 CFR 3.700(b)(1))]

(4) **Action of Concurrent Payments.** The running award in the companion case will be terminated as of date of last

payment, using reason code 30, Election of Other VA Benefit. For periods of concurrent payment, the award in the elected case will authorize the difference between the greater and lesser benefit through the date of last payment on the terminated award in the companion case and the full rate thereafter.

8.11 CONTINUOUS COHABITATION

a. Claimant's Statement. In the absence of controverting information of record, the surviving spouse's statement on the application for death compensation, dependency and indemnity compensation, or pension that she/he lived continuously with the veteran from the date of marriage to the date of death will be accepted as showing continuous cohabitation within the meaning of the laws. If there was a separation, the surviving spouse's statement as to the reason will be accepted in the absence of contradictory information. ([38 CFR 3.53(b)])

b. Development. When there is conflicting evidence concerning the cause of the separation or the status of the parties at the time of the veteran's death, further development of the facts should be undertaken. The surviving spouse should be requested to submit VA Form 21-4138, Statement in Support of Claim, together with certificates from two persons showing:

(1) Date, place, and a full explanation of the cause of each separation.

(2) Whether the claimant and the veteran intended to resume living together and detailed attempts of either to effect reconciliation.

(3) The amounts and frequency of the veteran's contribution to the claimant's support during each separation.

(4) Whether there was a written agreement or court order of separation; if so, a copy of same should be submitted.

(5) All dates and places where the claimant and veteran resided from the date of last separation to the date of the veteran's death.

(6) Whether the claimant or the veteran ever applied for divorce or annulment; if so, the date, place, and results of the court action should be furnished with a certified copy of the court decree if any.

c. Factors Relating to Determinations. In determining whether continuous cohabitation has been established, the facts presented in each particular case must be considered. Mere suspicions are not proof that there was a separation due to the fault of the surviving spouse. If the evidence of continuous cohabitation is conflicting or unsatisfactory, a field examination should be requested. After obtaining all available facts, reasonable doubt should be resolved in the claimant's favor.

(1) Temporary separations which naturally occur in the ordinary course of life, including those caused for the time being through fault on the part of either party, will not break the continuity of the cohabitation. ([38 CFR 3.53(a)])

(a) If the parties lived apart by mutual consent for purposes of convenience, health, business, or any other reason which did not show an intent on the part of the surviving spouse to desert the veteran, the continuity of the cohabitation will be accepted.

(b) Evidence indicating that there was no permanent separation due to the fault of the surviving spouse may consist of, but is not limited to;

1. Statements on application forms or other documents that the parties were living together;

2. Letters or other documents indicating that the surviving spouse was living at the veteran's address at date of death;

3. Veteran's death certificate showing that the surviving spouse and the veteran were living at the same address, or;

4. Letters written by the surviving spouse on behalf of the veteran during his/her lifetime.

(2) Continuous cohabitation broken only by reason of military service must be regarded as continuing. Continuity is considered as broken, however, when as the result of the claimant's conduct, the parties became estranged and this conduct was not condoned by the veteran.

(3) Regardless of the reason for the initial separation, the claimant is not without fault as to any period during which there was cohabitation with another except when such relationship was entered into in good faith with a reasonable basis for the claimant believing that her/his marriage was legally terminated (for example, because of trickery on the part of the veteran).

(4) The birth of a child to the claimant as the result of relations with a person other than the veteran creates a rebuttable presumption of lack of continuous cohabitation.

(5) When there was separation followed by a reconciliation with continuous cohabitation up to the date of the veteran's death, even though the separation was due to fault on the claimant's part, the continuity of cohabitation should be considered as unbroken. However, "deathbed" reconciliations in and of themselves, do not satisfy the requirements.

(a) If there was a reconciliation, the relevant facts should be developed to determine whether there was a condonation or bona fide forgiveness by the veteran and a living together thereafter to the date of death.

(b) If so, the statutory and regulatory requirements regarding continuous cohabitation should be considered as having been met.

d. Determinations

(1) In those cases in which it is determined that continuous cohabitation has been established, it will generally not be necessary to prepare a memorandum finding. However, when the determination is *unfavorable,* a finding will be prepared in accordance with paragraph 14.34 for the approval of the authorization officer.

(2) When a lack of continuous cohabitation is definitely shown and there is also a question of the validity of marriage, the claim will be disallowed without resolving the question of the legality of marriage. The letter of disallowance will include the statement: "A determination has not been made as to whether you might be accepted as the legal [surviving spouse] of the veteran under the applicable laws."

SUBCHAPTER II. RELATION OF PARENT

8.12 GENERAL

The term "parent" as used in 38 U.S.C. 101(5) is defined in VAR 1059. The following paragraphs outline the procedure to be followed in developing claims by or for parents and in determining whether relationship has been established.

8.13 NATURAL PARENT

a. Mother. Proof of birth of the veteran will be requested in accordance with VAR 1209. If such evidence shows the claimant as the mother of the veteran, regardless of whether he/she was legitimate or illegitimate, it will be accepted as proof of her relationship unless there is other evidence to the contrary.

b. Father. Proof of birth of the veteran showing the names of the parents will be requested in accordance with VAR 1209. If the veteran was illegitimate, proof that the claimant is the natural father will not be sufficient; it must also be established that he assumed the legal and moral obligations of a parent and that the usual family relationship existed. This may require the affidavits or certified statements of disinterested persons or, in controversial cases, a field examination.

8.14 PARENT THROUGH ADOPTION

The claimant will be requested to furnish a certified copy of the final decree of adoption together with any additional evidence which may be necessary to identify the parties. In jurisdictions where court records of adoption are not readily available, a certified copy of the revised birth certificate showing the name of the claimant as parent will be accepted to establish the claimant as the adoptive parent. (VAR 1210(C).)

8.15 FOSTER PARENT

a. **VA Form 21-524.** In every case in which claim is made by or for a foster parent, the completion of VA Form 21-524, Statement of Person Claiming To Have Stood in Relation of Parent, will be required unless:

(1) The facts show clearly that a loco parentis relationship did not exist and that disallowance is in order without further development, or

(2) Dependency is not shown in which event claim will be disallowed for nondependency and a statement included in the letter of disallowance that no determination has been made as to relationship.

b. **Period of Loco Parentis Relationship.** The requirement that the loco parentis relationship must have existed for not less than 1 year at any time before the veteran's entry into active service, has been interpreted to mean that the relationship must have had its inception while the veteran was a minor (Adm. Dec. 675) and that although the 1-year period need not have been completed during minority, it must have been completed before his/her entry into active service. The age of majority for this purpose would be considered 21 regardless of State statute. (Adm. Dec. 793) Therefore, development may be necessary to ascertain the age of the veteran when the relationship arose.

c. **Brother or Sister Claiming as Foster Parent.** When it is alleged that a brother or sister stood in the relation of parent to the veteran, the facts will be developed to ascertain:

(1) Age of each child in the household at the time of their parents' deaths;

(2) Extent to which claimant supported the veteran;

(3) Whether any of the other children (including veteran) worked and helped in maintaining the common household;

(4) Date each child commenced work and wages received;

(5) If claimant left the common household and set up his/her own home, the date thereof and whether the veteran thereafter lived in the claimant's home;

(6) Any circumstances showing an intent on the part of claimant to assume and discharge all parental duties and exact period during which the relationship existed.

d. **Relinquishment of Control by Natural Parent.** Whenever a natural parent was living at the time the loco parentis relationship is alleged to have arisen, development will be necessary to determine whether there was complete relinquishment of control by the natural parent, if evidence on which such a determination may be made is not of record. (See also pars. 8.17 and 8.18d.)

8.16 RECOGNITION OF NOT MORE THAN ONE FATHER AND ONE MOTHER

In developing evidence to ascertain the person who last bore the relationship of parent to the veteran, it will be considered that:

a. A religious or charitable institution is not a "person" for that purpose. (Op. Sol. 741-48)

b. The adoption of the veteran does not preclude the natural mother from receiving benefits provided she was the person who last bore the relationship of mother. (Adm. Dec. 541)

c. The death of a foster parent prior to the death of the veteran does not set up the entitlement of the natural parent unless such parent was actually the last person to stand in that relationship. (Op. G.C. 116-54)

8.17 ABANDONMENT BY PARENT

A natural mother or father who does not assume the legal and moral obligations of a parent is not entitled to benefits (Adm. Dec. 284) (See par. 39.04[c](2)(b) re DIC cases.) It is not necessary to show that someone else assumed that relationship in place of the natural parent. Whether there has been abandonment is a question of fact and should be determined only after complete development to ascertain:

a. The age of the veteran when the parent deserted the family.

b. All of the circumstances surrounding the desertion.

c. Whether thereafter any support or parental guidance was furnished by the parent and, if so, the extent and dates thereof.

8.18 ADMINISTRATIVE DECISIONS UNDER PARAGRAPH 14.34

a. **Contested Claims.** A formal finding will be required in all cases in which there are contested claims (par. 36.07).

b. **Loco Parentis Not Established.** A formal finding will be required when a determination of nonentitlement is made in the case of a person who claims to have stood in loco parentis to the veteran.

c. **Effect of Court Judgments.** Parental relationship may also be established by a judgment of a Federal court in a suit in which the United States was a party. The findings and conclusions determining such relationship will be given full faith and credit for the purposes of paying gratuitous VA benefits, even though the court determination may relate to other benefits. Nevertheless, a formal finding when required under subparagraphs a and b above will be prepared to determine whether the person so recognized meets *all* the requirements of [38 CFR 3.59.]

d. **Abandonment.** When, after development under paragraph 8.17, it is determined that benefits are not payable to a natural parent because of abandonment, or relinquishment of control, a formal finding will be required. A formal finding, favorable or unfavorable, will be required when a parent entitled to DIC alleges abandonment by another living parent who may have basic entitlement. If a claim or protest is filed by the other parent, the contested claims procedure (par. 36.01) will be followed and a formal finding made as provided in subparagraph a above.

NOTE: When there is a natural parent in the same parental line living, it is necessary to establish complete relinquishment of control or abandonment on the part of the natural parent. Such a case will be treated in the nature of a contested claim although no claim is filed by the natural parent and formal contested claim procedure is not involved. Under no circumstances should a finding be made without securing the statement or testimony of the natural parent, if available. When there is any reasonable doubt or conflicting evidence, field examinations should be requested.

SUBCHAPTER III. DEPENDENCY

8.19 DEVELOPMENT

Ordinarily, if the application for death compensation or apportioned disability compensation is incomplete as to the existence or establishment of dependency, VA Form 21-509, Statement of Dependency of Parent(s), will be dispatched by the appropriate dictated or form letter to secure adequate information upon which a determination of entitlement may be based. (But see par. 8.20a.) If further information is necessary, additional development may be undertaken as indicated by paragraph 9.02.

8.20 DEPENDENCY DETERMINATIONS

a. **Evaluation of Evidence Regarding Dependency.** Once the relationship of the parent(s) is established [(38 CFR 3.59)], the issue of dependency will be resolved as follows:

(1) Under [38 CFR 3.250,] net worth will be disregarded and there will be a conclusive presumption of dependency (for a parent not living in a foreign country) when:

(a) The claimant is a sole surviving parent (or a parent living apart from his/her spouse) *and* his or her income does not exceed $205 a month; or

(b) The parents are living together (or a remarried parent is living with a spouse) *and* their *combined income* is not more than $340 monthly.

(c) Ninety-five dollars will be added to the limits set forth in subparagraphs (a) and (b) for each additional "member of the family" as defined by [38 CFR 3.250(b)2.]

(2) If the income exceeds the amount specified in subparagraph (1) above, the expenses essential to the parent's reasonable mode of life as set forth in [38 CFR 3.250(b),] as well as his or her net worth, will be considered to determine if dependency may be held to exist.

(a) In the case of a remarried parent or when the parents live together but only one files for death compensation, only the claimant's net worth is to be considered [(38 CFR 3.263).]

(b) When parents living together submit claims, the extent of each parent's ownership of real and personal property will be ascertained and separate consideration given to *each* estate. In the event the claim of the other parent is disallowed because of nondependency, the successful claimant will be entitled to a rate payable for a single dependent parent.

(3) For Philippine cases, see paragraph 35.12.

[b. **Dependency Established.** Where the adjudicator or senior adjudicator determines dependency exists and the estate is $35,000 or more, the adjudicator or senior adjudicator shall prepare an administrative decision in accordance with paragraph 14.34 for approval by an authorizer. VA Form 21-5427, Corpus of Estate Determination, will be used. Where the adjudicator determines dependency exists and the estate is less than $35,000, a memorandum finding for inclusion in the claims folder is not required. (Also see par. 15.21b re award data entry when a factor.)]

c. **Nondependency.** When an initial determination or a subsequent reconsideration results in a conclusion of nondependency, an administrative decision will be prepared in accordance with paragraph 14.34 for approval by an authorizer. VA Form 21-5427 [ ] will be used when the basis for disallowance or termination is excessive net worth.

8.21 REQUESTS FOR PROOF OF CONTINUED DEPENDENCY IN CONNECTION WITH AWARD ACTION

a. **General.** The following procedure is to be observed in those cases of disability and death compensation in which a claim for or by a dependent has been pending for an extended period of time and award action is otherwise in order, except for the necessity of ascertaining whether the parent may currently be considered dependent. This situation may arise most frequently in cases in which a determination of entitlement has been delayed pending receipt of service or other records and proof of relationship of the parent.

b. **Award With Request for Proof of Continued Dependency.** If, at the time the claim is otherwise ready for allowance, information contained in the application establishes the existence of prima facie dependency at the time of filing claim and there is no indication that the situation may have changed, an award will be made promptly.

(1) In death cases, the award notice will be accompanied by FL 21-114 and VA Form 21-509.

(2) In disability cases, the award notice will explain the necessity of establishing the continued dependency of the parent(s), and will be accompanied by VA Form 21-509.

(3) A 60-day computer control will be established under diary reason code 22, Verify Income or Dependency.

(a) If the required evidence has not been received at the end of that period, payments to or for that dependent will be discontinued as of date of last payment using change reason code 16, Failure to Furnish Requested Evidence.

(b) In the event the required evidence is subsequently received within 1 year from the date of the request, payments will be resumed from the date of discontinuance; otherwise, payments will not be made for any period prior to the date of receipt of a new claim. [(38 CFR 3.652)]

8.22 FOLLOWUPS TO DETERMINE WHETHER DEPENDENCY HAS CEASED

Under certain circumstances, an award may be made to or for a parent whose present economic status warrants a determination of dependency but whose financial situation may reasonably be expected to improve in the future. This situation may exist in cases where, for example, the parent is comparatively young and has been unemployed because of ill health, or the award is predicated upon responsibility for minor children. When an award is made, a computer control will be established under reason code 22 for followup at an appropriate date to determine whether dependency has ceased.

a. **General.** If it appears probable that the claimant's financial situation may improve by reason of recovery of employability, or similar circumstances where a future date cannot be definitely estimated, the control will be established for 1 or 2 years, according to the circumstances involved (see subpar. c. below).

b. **Minor Children Involved.** When dependency is found by reason of financial responsibility for a minor child or children, the control will be established for release of the followup approximately 30 days prior to the date when the child (oldest child if more than one child involved) will attain legal age. A 60-day control will be established for receipt of the required evidence.

c. **Dependency Questionnaires.** A triennial review is conducted to obtain evidence of the dependency status of parents of deceased veterans in receipt of death compensation and to verify the dependency status of parents of veterans rated 30 percent or more disabled in receipt of additional compensation for dependent parents. (Ch. 9, subch. V) This routine review may be considered as an alternative to a specifically established control, provided the parent would not be "exempt" by reason of reaching age 72 before the desired review date.

8.23 CHANGES IN MARITAL AND DEPENDENCY STATUS OF PARENTS

The provisions of paragraphs 9.08 and 9.10, relative to DIC parent income and marital status changes, are basically for application in disability or death compensation cases when there is a change in the marital or dependency status of a parent, subject to the specific provisions of this paragraph.

a. **General.** A decision as to whether continued dependency is established will be required whenever there has been a change in a parent's marital or economic status. Included are those instances in which dependency status may be affected by changes in financial responsibility for minor children. (See par. 8.22b.) When such a change occurs, any necessary development of evidence required for this determination will be undertaken.

(1) In death compensation cases, FL 21-114 may be used, enclosing VA Form 21-509. In disability compensation cases, VA Form 21-509 will be enclosed with an appropriate dictated or form letter, requesting submission of the evidence required within 60 days.

(2) Proof of remarriage of a dependent mother will not be required solely for the purpose of authorizing payments in her remarried name. When continued entitlement is established at the same rate, this will be effected by the processing of a change of name transaction. (Par. 17.15)

(3) Payments being made to a (surviving or remarried) parent will not be suspended unless development is required by the facts in the individual case.

(4) If the required evidence is not received within the specified period, payments will be discontinued as of the date of last payment, using change reason code 16, Failure to Furnish Requested Evidence (VAR's 1500(V) and 1652).

b. **Adjustment**

(1) **Cessation of Dependency.** If it is determined that, by reason of the change in income, economic status or net worth, dependency no longer exists, the award of death compensation to a parent (or additional disability compensation for a parent) will be terminated under VAR 1660(A)(2), effective the first day of the year following the year in which the dependency ceased to exist. Reason code 11 (Excess Income) or 12 (Excessive Net Worth) will be used for death compensation stop award actions; reason code 56 (Dependent Removed) will be used when amending disability awards.

(2) **Increased Rate to Surviving (Remaining) Parent.** Under the provisions of VAR 1651, upon the termination of benefits to one parent (due to death or cessation of dependency), the award of death compensation to the remaining parent, if continued dependency is established, will be increased to the greater rate payable as the only parent entitled, effective from the date of termination of the other parent's award. Reason code 56 will be used for the increased rate award line.

c. **Resumption.** When payments of death compensation (or additional disability compensation) have been terminated or withheld because of excessive or undeterminable income or net worth, they may be resumed in accordance with the facts found, authorized from the earliest date of entitlement under the deferred claim, from the date of termination, or a later date as of which dependency again arose, if satisfactory evidence is received within 1 year from the date of notice of termination or deferment; otherwise, the effective date will not be made prior to the date of receipt of claim (VAR 1652(B)). (Also see par. 39.05.) There must be included in the "Remarks" on the award, the notation "Dependency continued" "Dependency reestablished __(date)__."

d. **Notice of Right To Elect DIC.** See paragraph 42.08.

CHAPTER 9. INCOME

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CHAPTER 9. INCOME

SUBCHAPTER I. INCOME: GENERAL

9.01 EVALUATION OF EVIDENCE CONCERNING INCOME

a. **General.** In the absence of contradictory or obviously incorrect information, statements contained in an application, EVR (Eligibility Verification Report) or other VA form will not be questioned. Failure to furnish complete information as to any particular item will not necessarily be construed as a fatal defect and the information will be evaluated in the light of other evidence, development will be undertaken only if there is reason to believe that the claimant may have inaccurately reported income received or anticipated. Net worth or amounts of income reported from sources such as wages or salaries will be accepted as the correct total net worth or total income from such sources in the absence of actual evidence in individual cases that an asset was not reported or that deductions have been made for retirement acts or plans, income tax, etc.

b. **Social Security Benefits**

(1) **Medicare Premiums**

(a) The SMIB (Supplementary Medical Insurance Benefit) provided by medicare is financed by a monthly premium paid by the individual and a matching payment by the Federal Government. For individuals receiving Social Security or Railroad Retirement benefits, the premium is deducted from their benefit payments. The monthly premium paid by the individual personally or withheld from Social Security or Railroad Retirement benefits does not come within the exclusions provided in 38 U.S.C. 503. Therefore, the amount of the premium may not be excluded when computing income for pension purposes. However, the matching contribution by the Government will not be considered income to a claimant. The value of hospital or medical services provided under either of the programs will not be counted as income to a claimant.

NOTE: Medicare premiums paid by an individual are deductible as medical expenses.

(b) Some private concerns reimburse their retired employees for premiums paid under medicare. This reimbursement is in lieu of free hospitalization and medical coverage which would otherwise be provided. These reimbursements will not be considered income and will not be considered as deductible medical expenses in protected pension cases. These reimbursements will be considered income and will be considered as deductible medical expenses in improved pension cases.

[(c) The Social Security Administration authorized all States but Wyoming and the Commonwealth of Puerto Rico to pay the medicare premiums for certain recipients of SSI (Supplemental Security Income). Payment of the medicare premium by the State is analogous to welfare and is excluded from income for VA purposes.

NOTE: The medicare premium may not be used for the unusual medical expense exclusion if paid by the State or by a welfare agency.]

(2) **Medicare-Nonreceipt of OASI Benefits**

(a) With certain specified exceptions (not pertinent here) eligibility for participation in the hospital insurance medicare program is limited to persons who are entitled to OASI (old age and survivors insurance) benefits. The fact that payments are not currently being made because of excess earnings is not material. Entitlement must have been established by the filing of an application for such benefits. However, it is not required that a person be entitled to OASI benefits in order to participate in the voluntary medical insurance program.

(b) The failure to file an application for OASI benefits does not constitute a waiver of retirement benefits as contemplated in 38 CFR 3.262(h). Therefore, the amount of OASI benefits to which the claimant would be entitled upon filing an application will not be considered in computing income. However, as indicated in subparagraph (1) above, the claimant's monthly premium may not be deducted from his or her total income.

NOTE: The medicare premium may be used for the unusual medical expense exclusion.

[ ]

(3) **Withheld Social Security.** The actual amount received from Social Security is countable as income if the payment is less than the entitlement amount due to an involuntary withholding (e.g., for recovery of an overpayment). The entitlement amount is countable as income if the actual payment is less due to a voluntary withholding (e.g., medicare premiums).

(4) **Combined Social Security Checks — Income Allocation**

(a) When the veteran and his or her family are receiving the maximum family Social Security benefits, one check is generally paid to the veteran and spouse as dual payees, with a second check paid to the mother of the children of the veteran. If the mother (assuming that the mother is the non-veteran spouse) begins receiving wages which, because of the amount, bar her from further receiving Social Security, her share of the Social Security benefits would normally be divided among the children. For purposes of administrative convenience, neither the dual payee check for the veteran and spouse nor the check the mother receives for the children is adjusted when there is no change in the maximum family benefit. Instead, notice is sent to the wage earner showing the breakdown to which each person is entitled.

(b) That portion of the Social Security benefit which is received for the children is, of course, not countable as the veteran's income in protected pension cases, regardless of the name in which it is received. Consequently, when a veteran reports receipt of Social Security benefits under spouse's income on any VA income form, and the spouse is receiving wages, development may be necessary to ascertain the amount of Social Security to which each person is entitled.

(c) A similar situation exists in the case of a surviving spouse in receipt of Social Security benefits for herself/himself and minor children. If the surviving spouse becomes subject to work deductions because of earnings, she/he continues to receive benefits in her/his name in cases where the children's benefits total the maximum benefits payable. This is done for administrative convenience and the amount thus paid to the surviving spouse is not to be counted as her/his income.

(5) **Adjustments Based on Terminated Disability Social Security**

(a) If the wage earner appeals an SSA (Social Security Administration) determination, that he or she is no longer disabled, he or she may elect to have disability Social Security benefits continue during the appeal process with the understanding that, if the determination is upheld on appeal, payment made after the initial "termination" date will have to be repaid.

(b) The wage earner is not allowed to elect to receive a reduced rate during the appeal, but he or she may elect to have only his or her payment continued, and not that of eligible dependents in the household. As an alternative, he or she may have his or her payment terminated and have that of one or more dependents in the household continued. The wage earner's election does not cover a dependent outside the household whose payments are contingent upon the wage earner's entitlement. Such a dependent, however, is afforded the right to elect to have benefits continue during the wage earner's appeal and accepts responsibility for his or her own overpayment if the appeal is denied.

(c) In all cases involving terminated disability Social Security benefits, it is necessary to establish whether and in what manner the beneficiary has exercised this right of election. Before VA benefits are increased, there must be on file, at the least, a statement from the beneficiary to the effect that he or she and/or specific dependents no longer receive Social Security *and* either will not appeal the SSA decision or elected to receive no payments (or payments only for designated family members) during an appeal.

(d) In Improved Pension cases, reannualization of family income will take place at the time Social Security payments to the wage earner and/or dependents actually cease, whether at the time of the initial SSA decision or after an appeal. As long as Social Security payments are made, they are counted as income. IVAP (Income for VA Purposes) is to be recomputed from the day following the date the last Social Security check is received, and pension is to be increased accordingly from the first of the next month (38 U.S.C. 3011). If Social Security payments are discontinued and then restored after an appeal, end-of-month rule will apply for the pension reduction. Any retroactive Social Security payments made at the time will be countable for 12 months. Any overpayment created by the SSA because of nonentitlement during the appeal period is to be ignored until SSA benefits are resumed. Amounts withheld to recover the overpayment are not to be counted as income if benefits are resumed.

(c) When a DIC parent's Social Security payments are discontinued, the account is to be adjusted retroactively based on revised calendar year income (and as restricted by 38 U.S.C. 3011). If Social Security benefits are later restored, the end-of-month rule will apply for the reduction, and all Social Security payments received and expected during the calendar year will be countable for the balance of the year.

(f) In the case of a veteran wage earner for whom SSA has made an adverse disability determination, a review pursuant to paragraph 9.23i is to be undertaken at the time the VA receives notice of the initial SSA decision, whether or not the SSA decision is being appealed.

(6) **Withdrawal of Application**. The withdrawal of a Social Security application after a finding of entitlement, so as to maintain eligibility for an unreduced Social Security benefit upon attainment of a certain age, should not be regarded as a waiver under section 503(a) of title 38, nor should the Social Security benefit that would be received but for the withdrawal be counted as income.

c. **Miscellaneous Income Sources**

(1) **Railroad Retirement Annuity for Disabled Worker**. The Railroad Retirement Act, as amended, provides that when a worker with dependents is awarded, prior to retirement age, total permanent disability, the entire payment belongs solely to the disabled worker. When a worker retires because of length of service and age, his or her spouse can be entitled to benefits based on the worker's service, however, the spouse invariably receives a separate check (the Railroad Retirement Board does not follow Social Security policy of combining checks.)

(2) **Home Energy Assistance Act**. Public Law 96-223, the Crude Oil Windfall Profit Tax Act of 1980, provided grants to low income households to meet the rising costs of energy for heating and cooling homes. Any of these grants made to pensioners are for maintenance and will be excluded from countable income under 38 CFR 3.261(a)(6), 3.262(c), and 3.272(b).

(3) **Bureau of Indian Affairs Distribution to Indian Tribes Under Public Law 93-134**. Public Law 93-134 provides for distribution, under a plan developed by the Bureau of Indian Affairs, Department of the Interior, of funds appropriated to pay a judgment of the Indian claims commission or court of claims to any Indian tribe, band, group, pueblo or community. Receipt by an individual of his or her per capita share is considered a conversion to cash of capital assets and will be excluded from countable income for purposes of payment of VA pension. For purposes of corpus of estate determination, a per capita distribution under Public Law 93-134 will not be considered as a part of the recipient's resources for the year in which the distribution is received.

(4) **DM&S Work-for-Pay Programs**

(a) **General**. Income received for DM&S IT/CWT (Incentive Therapy/Compensation Work Therapy) and other work-for-pay programs, including the "poppy" program is countable as income for VA purposes.

(b) **Notices From VA Medical Centers**

1. **Quarterly Reports**. VA medical centers will provide a quarterly report to the regional office of jurisdiction for any pensioner entering a work-for-pay program. The report will provide the veteran's name, claim number, date entered and discharged from work-for-pay programs, and amount of income received from work-for-pay program during quarter.

NOTE: After the initial report, a veteran continuing in a work-for-pay program will not be listed on subsequent reports unless the income changes from the previous quarter by more than $100 or participation terminates.

2. **Annual Reports**. Before January 31 of each year, VA medical centers will provide an end-of-year report of the gross amount paid during the calendar year. These reports, along with information on the Eligibility Verification Report, will be used to establish countable income for the period for which payments are reported.

(c) **Processing**

1. **Quarterly Reports**. Upon receipt of notice from the medical centers that a payee is participating in a work-for-pay program, adjudication will ask new pensioners to estimate income from the program for the 12-month period following the beginning date of participation. Section 306 pensioners will be asked to report income for the calendar year during which they entered the program and following calendar year. Adjudicators shall project income based on annualization of the information from the VA medical center and the estimate from the payee. Any reasonable estimate will be used.

2. **End-of-year Reports**. Upon receipt of end-of-year reports, adjudicators shall review the latest Eligibility Verification Report to determine if the pensioners properly reported IT/CWP income. If the pensioner has not, adjust awards based on actual income reported on end-of-year report. If Eligibility Verification Report data are not available, diary for its receipt.

NOTE: IT/CWT reports from the VA medical centers are considered third party information and applicable due process procedures in paragraph 14.36 must be followed.

9.02 DEVELOPMENT

a. **Use of VA Forms**

(1) If additional evidence relative to the claimant's income and or net worth is necessary, a dictated or form letter containing complete instructions as to the exact nature of the income evidence to be submitted will be used to transmit one or more of the following forms, as appropriate:

VA Form 21-527, Income-Net Worth and Employment Statement (requested by FL 21-96) (Par. 22.12c)
VA Form 21-4100, Statement of Income and Net Worth (Pars. 9.08c and 9.27)
VA Form 21-4103, Information From Remarried Widow/er
VA Form 21-4138, Statement in Support of Claim
VA Form 21-4165, Pension Claim Questionnaire for Farm Income (Par. 22.12d)
VA Form 21-4179c, Income Statement for Parent Claiming Dependency and Indemnity Compensation
VA Form 21-4185, Report of Income From Property or Business (Pars. 9.12 and 9.28)
VA Form 21-4192, Request for Employment Information in Connection With Claim for Disability Benefits (Par. 22.12e)
VA Form 21-6897, Statement of Income and Net Worth-Disability (Pars. 9.08c and 9.27)
VA Form 21-8049, Request for Details of Expenses (DIC-Parent or Pension Claim)
VA Form 21-8416, Request for Information Concerning Medical, Legal or Other Expenses (Pars. 9.07b(2) and 9.22b(3))
VA Form 21-8416a, Request for Information Concerning Unreimbursed Family Medical Expenses (Pars. 9.07c(1) and 9.22c(1))

(2) Employers will not be routinely requested to furnish information relative to employment, wages, etc., unless adequate information cannot be obtained from the claimant or through other sources. However, when a claim is filed within 60 days of the date on which the claimant's employment terminated, and it is probable that he or she may have been entitled to severance pay, accumulated leave pay, etc., the employer should be requested to furnish information as to the amount and date of payment. VA Form 21-4192 Request for Employment Information in Connection with Claim for Disability Benefits, may be used for this purpose. (See also par. 22.12e.)

b. **Railroad Retirement Contribution**. (See par. 13.12.)

c. **Information From Income Tax Returns**. (See par. 13.15.)

d. **Requests for Social Security Number**. (See par. 7.13; see also par. 22.13c for proof of no Social Security income for veterans and par. 32.16d for surviving spouses, children and parents.)

9.03 DEFERRED DETERMINATIONS (ORIGINAL OR REOPENED CLAIMS)

a. **General**. When, in an initial or reopened claim, there is a reasonable doubt, either as to the amount of anticipated income, or probable date of receipt, payment may be withheld or authorized at the lowest rate consistent with the anticipated income (38 CFR 3.260(b) or 3.271(f)).

(1) **Social Security or Other Retirement or Survivor's Benefits**

(a) **Benefits Based on Disability**. Any application for Social Security benefits dependent on disability status, whether filed by the worker, surviving spouse of the worker or a surviving spouse parent of the worker, will not delay the adjudication of the claim for VA benefits. Award of Social Security benefits will be treated as receipt of contingency income. (See subpar. (2) below.)

(5) **Benefits Based on Longevity or Dependency Status**

1. **Pending VA Claim**. When the payee or any dependent has potential entitlement based on longevity (age) or dependency status (e.g., as a parent of a minor child in a death case), the claimant will be advised that action on the claim is dependent on proof of entitlement or nonentitlement to Social Security benefits, as required by paragraphs 22.13 (disability claims) and 32.16d (death claims).

2. **Claimant in Receipt of VA Benefits**. When the payee or dependent in receipt of VA benefits establishes entitlement to Social Security based on longevity or dependency status, the income from that source will be considered under the end-of-year rule for Section 306 or Old Law cases and end-of-month rule for DIC parents and Improved Pension cases.

(2) **Contingency Income**. Whenever receipt of income depends upon the happening of an uncertain contingency (e.g., pending claim for disability retirement, settlement of an estate, collection of personal injuries, judgment in a pending civil suit, etc.) the payment (or disallowance) of pension or parent's DIC will be based upon the claimant's anticipated income *exclusive* of the contingency income. If the claimant receives contingency income subsequent to award action, it will be considered under the end-of-year rule for Section 306 and Old Law cases and the end-of-month rule for DIC parents and Improved Pension cases. Contingency income for which entitlement accrues on or before the date of entitlement to VA benefits and received before award action will be countable from the effective date of the award. Otherwise, contingency income received before award action will be countable from date of receipt.

(3) **Dependency Status Unresolved**. When dependency status is pending development, award action may be taken to pay the veteran whichever is the lesser, the rate based on his or her own income, or the rate based on the anticipated income of the claimant and all dependents; or, payments will be deferred if the countable income under either method exceeds the applicable limitation. (See also par. 9.10c(2)(b) and (c).)

b. **Notice to Claimant**. When payment is deferred or a reduced rate is authorized, the claimant will be fully informed of the action taken and of the right of appeal.

(1) The notice will also state that if the total income for the period in question does not exceed the applicable limit, payment will be made, or increased rate awarded, for the period for which payment was deferred or paid at a lower rate, if such evidence is received at any time within the same or succeeding calendar year (38 CFR 3.660(b)).

(2) VA Form 21-4100, 21-4138, [illegible] 21-6897, and as such other appropriate form will be furnished for the claimant's use. (See also par. 9.04 re disallowance when deferring payments.)

c. **Deferred Adjustment**. Generally, receipt of a revised income report will result in either the establishment of a pending issue (action delayed pending further development) or an immediate award action (retroactive increase or application of the end-of-year rule or end-of-month rule). However, if review of the claims folder and prior income reports indicates that previous reporting has been unreliable, so as to cast doubt on the current estimate, adjustment action will be deferred pending timely report of actual income received. (See also par. 9.08 re subsequent adjustment.)

9.04 DISALLOWANCE DUE TO EXCESS INCOME OR NET WORTH

a. **General**. When a claim is disallowed because of excess income or net worth (or because of a deferred determination—par. 9.03), or when dependency status for a child is disallowed due to excess net worth, the claimant will be informed of the reason for the disallowance or deferment, of the right to reopen the claim at a later date (as indicated below) if income or net worth is reduced, and of the right to appeal.

b. **Use of Form Letters**. Notice of disallowance of claims because of excessive income or net worth will be made by Target disallowance letter or by dictated or Form letter.

NOTE: When a claim for pension or a child's dependency status is disallowed because of net worth, the claimant will be informed that the VA should be furnished prompt notice of any material reduction in net worth. (See also par. 9.27.)

c. **Effective Dates Following Disallowance or Termination Due to Excess Income or Net Worth (Improved Pension and DIC)**

(1) **Income**

(a) **Same or Succeeding Year**. Under 38 CFR 3.660(b), if evidence establishing that countable income did not exceed the applicable maximum annual pension rate is received within the same or succeeding year, payments may be made retroactively based on the earliest date of entitlement. The following examples illustrate this principle for Improved Pension and DIC cases.

EXAMPLE 1: The veteran died February 9. The surviving spouse's original death claim was denied March 15 due to receipt of Government life insurance in excess of the maximum income limitation. On January 31 of the following year, the spouse reports payment during the year of the veteran's death of medical expenses, reducing countable income to below the maximum income limitation. The spouse is entitled from the first of the month of the veteran's death. Payment will be made from the first of the subsequent month unless the veteran was in receipt of VA benefits in an amount greater than the death pension otherwise payable.

EXAMPLE 2: Same facts as above except that in lieu of medical expenses, the surviving spouse submits a statement that expected income for the year following the year of the veteran's death will be $0. The pension "year" established by the original claim extends from February 1 (first of month of veteran's death) through January 31 of the following year. The insurance payment disqualifies the surviving spouse for pension during the period February 1–November 30. However, the insurance payment is within the maximum income limit established December 1. The earliest possible date of entitlement in this case will be December 1 (due to maximum income limitation increase) with an adjustment from February 1 of the following year based on $0. The actual payment date will be January 1. (38 CFR 3.31)

(b) **Subsequent to Succeeding Year (Improved Pension and DIC Only)**. If entitlement is not established in the same or succeeding year (following disallowance due to excess income), the earliest possible date of entitlement will be the date of receipt of the reopened claim.

(2) **Net Worth**. Claims reopened on the basis of net worth change are subject to 38 CFR 3.660(d) which states that there is no entitlement for any period prior to date of receipt of a reopened claim.

d. **Net Worth Determinations**

(1) Current economic conditions will be considered in deciding when full development of net worth is needed. The final determination after completion of development may be favorable or unfavorable as established by the facts peculiar to the specific case under consideration.

(2) In addition to inflation, there are many variables that affect net worth determinations. Some are of a generalized nature such as the life styles and living standards of one community as contrasted to another. Others are specific to the claimant, such as life expectancy, state of health, family obligations, educational expenses, medical expenses, dietary expenses, housing costs and so on. The nature of the assets, their marketability, and convertibility into cash are also for consideration, as well as the impact of disposing of income-producing property. All of these factors must be carefully and compassionately weighed before arriving at a decision affecting payment of pension.

(3) A claim under Public Law 95-588 requires consideration of the net worth of both the veteran and spouse as affected by the expenses of the family unit. A net worth which would be considered excessive when determining the net worth and expenses of only one individual may not be excessive in this example.

(4) Any children included in a veteran's or surviving spouse's claim under Public Law 95-588 are entitled to a separate net worth determination. This determination will be made based only on the child's net worth and expenses and in the event that the determination is unfavorable and dependency of the child is not established, that child's net worth, expenses and income will not be considered in determining the net worth or income of the claimant. The same basic eligibility criteria that are applied to veterans and surviving spouses in net worth determinations are to be applied to children except for the life-expectancy provision (unless the child is helpless). The determination should be confined to that period of eligibility to VA benefits (i.e., age 23) giving full consideration to the probability of school attendance beyond the secondary school level.

9.04.1 COMMENCEMENT OF THE PERIOD OF PAYMENT

a. **General.** Title 38, Code of Federal Regulations, section 3.31 provides that payment of monetary benefits based on an original, reopened, or increased award of DIC or pension may not be made for any period before the first day of the calendar month following the month in which the award would otherwise be effective. For the purposes of this provision, an "increased award" is an award that is increased because of an added dependent, an increase in disability, or a reduction in income.

(1) **Effective Dates.** This provision is a prohibition of payment for the month of entitlement and does not alter the adjudication of the "effective date" of entitlement as provided by existing law. A beneficiary is to be "deemed" to be in receipt of benefits for the initial (nonpayment) month for all other purposes (e.g., health care).

(2) **Exceptions to 38 CFR 3.31.** Title 38, Code of Federal Regulations, section 3.31 expressly provides that an original DIC or death pension award to a surviving spouse will not be affected if the amount of benefits the veteran would have received for the month of death exceeds the amount of DIC or death pension otherwise payable. If that is the case, the surviving spouse will be awarded the amount which would have been payable to or for the veteran for that month but for the fact of death of payee (38 U.S.C. 3110). If DIC or death pension would be a greater rate or if the veteran was not otherwise entitled to benefits during the month in which death occurred, all payment to the surviving spouse will be withheld for the initial month.

b. **Elections.** Title 38, Code of Federal Regulations, section 3.31 applies to most elections. An award because of an election of Improved Pension in lieu of Section 306, Old Law, or SAW pension (if it results in an increased rate) will commence at the first of the month following the actual date of election (date of receipt). Other voluntary elections that result in increased rates are also affected in the same way. Elections between disability compensation and pension (including those assumed in par. 29.04) are not affected if they result from legislative changes (e.g., a COLA increase in one of the benefits causes an advantageous election situation).

c. **Award Processing.** Awards that provide only for continuity of entitlement with no rate increases are not affected by 38 CFR 3.31. Awards that are "adjustments" of a benefit are also not affected. These adjustments include withholdings or offsets associated with apportionments, incarceration, institutionalization of incompetents, hospitalization, deductions, and collections of overpayments. Title 38, Code of Federal Regulations, section 3.31 does not apply to any increase resulting solely from the enactment of legislation (e.g., cost-of-living adjustments). The following examples illustrate applicability and nonapplicability of 38 CFR 3.31.

EXAMPLE 1: A veteran's pension has been reduced because a minor child attained age 18. VA Form 21-674, Request for Approval of School Attendance, is received showing the child's continuous enrollment in an approved school from age 18. If the claim is timely received and entitlement exists retroactively to the date the dependent was removed, with no increase over the *prior* rate, this is neither a reopened award nor an increased award for the purposes of 38 CFR 3.31.

EXAMPLE 2: A child included on a widow's DIC award attains age 18 and claims DIC based on continuous school attendance after the child's 18th birthday. The award to the school child is an original award (it is not an apportionment since the child has independent entitlement). Payment for the initial month cannot be made.

EXAMPLE 3: A veteran whose pension was reduced to $60 under 38 CFR 3.551(c) is now discharged from the hospital. Restoration of the full pension rate is not an increased award within the meaning of the new legislation, but is an adjustment to restore the previous rate. The same principle would control if previously existing aid and attendance benefits had been withheld under 38 CFR 3.552.

EXAMPLE 4: A veteran pensioner is continuously hospitalized in a VA medical center beginning October 11 until discharge on November 19. Based on the summary, the rating board grants aid and attendance effective the date of admission, October 11. Under 38 CFR 3.552(k), the veteran (unless he or she suffered from paraplegia and incontinence, from blindness, or from Hansen's disease) would be paid only the housebound rate for the period of hospitalization and the aid and attendance rate effective the date of discharge. The veteran is considered to be entitled to one "increased award" within the meaning of 38 CFR 3.31. The existing pension rate will continue through October, the housebound rate will commence November 1, and the aid and attendance rate will commence November 19.

EXAMPLE 5: A pensioner receives a one-time payment of income on August 23, and the pension rate is reduced for the period September 1 through August 31, of the next year. The pension rate change, when it occurs on September 1, will not be an "increased award based upon a reduction of income." Aside from an intervening cost-of-living adjustment, the claimant's income will be unchanged from September 1. The award line effective September 1 of the next year represents restoration of benefits payable based upon the previously existing income for VA purposes.

EXAMPLE 6: A veteran's PT date is October 7 and his entitlement for income computation purposes begins on that date. Although the commencing date for pension payment is November 1, income received on or after October 7 will be counted in the computation of income for VA purposes.

SUBCHAPTER II. INCOME: DISABILITY/DEATH PENSION UNDER SECTION 306 AND OLD LAW

9.05 AWARDS AND TERMINATIONS

NOTE: Original or reopened claims for Section 306 or Old Law pension must be denied unless continuous entitlement since December 31, 1978, can be established (38 CFR 3.960)

a. **General**. Original and reopened pension awards to veterans, surviving spouses, and children, and DIC awards to parents must always supply complete income information as data for entry (pars. 15.20a and 15.33b).

NOTE: Computer programs will no longer audit the IVAP (developed from income segment data) against the "income amount" on the award line for Old Law and Section 306 pension awards. The IVAP will reflect current income whereas the award line "income amount" will be the protected 1978 income.

(1) What constitutes receipt of income at a rate which, if continued through the calendar year, would exceed the applicable limitation depends on the facts in the individual case. Broad discretion will be allowed in this determination.

(2) For instructions as to required entries of complete income data for entry, see paragraph 15.20a and c; see also par. 9.15f re entries when DIC parent income is proportionately computed.

b. **Scheduling Future Reductions**. Reopened awards will provide for future changes due to children reaching age 18 or terminating approved schooling. The protected 1978 income data will be the basis for payment for all periods during which actual or estimated income is within the income limitation.

NOTE: If the scheduled loss of the last dependent will occur subsequent to the current year, the original or reopened award will show the future reduction to the veteran or surviving spouse alone rate based upon the protected 1978 income (or, in a Section 306 case, to a $5 per month, or special aid and attendance allowance rate if the protected 1978 income exceeds $3,770), provided the current year IVAP is within the current limit.

(1) **Loss of Last Dependent–Current Income Exceeds Limitation**. See subparagraph c(2) below.

(2) **Loss of Last Dependent–Current Income Within Limitation**. If the claimant's current annual income is within the income limitation, the original or reopened award will provide for reduction to the veteran or surviving spouse alone rate (based on the protected 1978 income or to a $5 per month rate if the protected 1978 income exceeds $3,770 in a Section 306 case) effective the date of the scheduled dependency loss.

NOTE: If the veteran was entitled to aid and attendance benefits on 12/31/78, and the protected 1978 income entitles him or her to a special aid and attendance allowance, it will be paid in lieu of the $5 rate.

c. Scheduling Future Terminations

(1) **Increased Income.** When the claimant's annual income next year will exceed the applicable income limitation, the original or reopened award will provide for termination January 1 of the next year. (See par. 9.07 re deductible expenses.) Special law 14 [is] not [ ] required.

(a) The termination line will show the current or expected (as opposed to protected 1978) income applicable to that year.

(b) The complete income data for entry [is] that which [produces] IVAP consistent with the income amount entry on the termination award line.

NOTE: Future increases in income for any year beyond the immediate next year, when reasonably anticipated, will be incorporated as a future date termination. A master record diary control will be established in order to verify the fact of excessive income and timely action taken to terminate the award.

(2) **Loss of Last Dependent Scheduled for Current Year.** If the scheduled loss of the last dependent will occur during the current year and the claimant's current (as opposed to protected 1978) annual income exceeds the current income limitation for a veteran or surviving spouse alone, the original or reopened award will provide for termination effective the date of the scheduled dependency loss.

(a) Special law code 18 [is] not [ ] entered.

(b) The termination line will show the current or expected (as opposed to protected 1978) income applicable to that year.

(c) The complete income data for entry will produce IVAP consistent with the income amount entry on the termination award line.

d. **Determination of Net Countable Income—General.** In determining entitlement to pension, the claimant's income limitation [is] established on a calendar year basis. The income (for inclusion under 38 CFR 3.261) for the calendar year in which received [is] determined, and computations [ ] made in accordance with 38 CFR 3.260.

(1) Only the dollar amounts of annual income from specific sources [are] used for these computations. All cents [are] dropped, including those resulting when applying the 10 percent deduction from payments of annuities, endowments, etc.

(2) The net countable income upon which the payee's entitlement [is] based may involve separate computation steps, depending on whether there is only the payee's income or also the income of a spouse, and whether there are any deductible expenses to be considered in the total computation.

(3) The payee's "basic" net countable income [is] computed by first determining the sum total of annual income (dollars only) from Social Security and any other retirement or annuity. Ninety percent of this sum total (a 10 percent exclusion is permitted under 38 CFR 3.262(e)) [is] added to the dollar amounts of annual income from earnings and all other "countable" income to obtain the "basic" net countable income.

NOTE: Only the balance of disability retirement income, after deduction of the specific disability related expenses, if any, is subject to the 10 percent exclusion (38 CFR 3.262(i)).

9.06 INCOME OF SPOUSE (SECTION 306 PENSION CASES ONLY)

a. **General.** A spouse's countable income may be a factor in determining the rate payable for Section 306 pension to veterans (38 CFR 3.262(b)). (See also par. 13.07f re combined social security checks to veteran and spouse.)

b. Determining Countable Income

(1) A veteran is considered "married" if living with his or her spouse or, even when they are living apart if reasonably contributing to the spouse's support. [If a veteran's spouse receives Social Security benefits based on the veteran's Social Security earnings record, the spouse's benefits may not be considered a contribution from the veteran since the spouse has separate entitlement to these benefits. However, reasonable contribution may be found if payments are made from the veteran's income in any amount consistent with the veteran's income.] However, the spouse's income [is] not [ ] a factor in determining the veteran's net countable income to arrive at the rate payable, unless they are "living together."

(2) When they are living together, it [is] presumed that the spouse's income (in excess of whichever is the greater, the exclusion provided by 38 CFR 3.262(b)(2) or the spouse's total earned income) is available to the veteran. This presumption may be rebutted by evidence of unavailability to the extent needed to defray expenses beyond the usual family requirements. (38 CFR 3.262(b)(2))

(a) In determining the exclusion of "38 CFR 3.262(b)(2) vs. earnings," the maximum exclusion of *gross pay* rather than takehome pay [is] allowable, without reduction because of expenses incident to the spouse's employment. Of course, if the spouse's "earnings" are from a business enterprise, VA must determine whether this is a return on investment, and thus not earned; or, if the spouse's labor or services are substantial and, therefore, earned income.

(b) It is proper to exclude any income of the spouse used to pay expenses which are beyond the ordinary and usual family requirements but which the spouse is under a legal or moral obligation to pay. The obligation must be real and not merely assumed, and the basic element of need to maintain a reasonable standard of living must be present. In this category [are] expenditures for such reasons as prolonged illness of a member of the family, child care necessitated by the spouse's employment, special training for a handicapped child, tuition and other costs for a child attending college, etc.

NOTE: Only current expenditures may be considered.

(3) The 10 percent exclusion of income from annuities and retirement benefits also applies in computations of the individual income of a spouse. The amount remaining after this 10 percent exclusion is subject to the "38 CFR 3.262(b)(2) vs. earnings" exclusion as the amount not available to the veteran.

(a) This remaining amount [is] further reduced by deduction of the spouse's unusual family expenses.

(b) The balance, if any, [is] added to the veteran's "basic" net countable income, further subject only to allowed deductible expenses explained in paragraph 9.07.

9.07 DEDUCTIBLE EXPENSES

a. General. In determining net countable income, there are expenses excluded from only specific income, as contrasted with expenses deductible from otherwise net countable income.

NOTE 1: For pension cases, entry of amount of "deductible expense" [is] required for entry as a part of the complete income information used in computation of "Income for VA Purposes" only as provided in this paragraph. Any "combining" (for example, showing net income from all sources less deductible expenses in "other income") of separate income sources required for entry is PROHIBITED.

NOTE 2: Any deductible expense (recurring or nonrecurring) which was applicable December 31, 1978, becomes a part of the protected 1978 income for Section 306 and Old Law cases. This protected expense, however, will not be used in Adjudication to reduce countable income for future years. A statement of the actual or anticipated expenses for the year in question will be annotated in the "Remarks" section of the award. Only recurring expenses are for entry to the master record.

b. Exclusions From Specific Income

(1) **Exclusions Determining Net Profit—Not for Entry.** Expenses excluded under 38 CFR 3.262(a)(2) to arrive at income (i.e., net profit) from rentals, business or profession [are] NOT [ ] for entry as "Deductible Expenses." The *net* profit amount [is] entered as "Earned" or "Other," (whichever is appropriate) on the 306 screen.

(2) **Disability Retirement Expenses.** 38 CFR 3.262(l) provides that medical, legal and other expenses incurred prior to award of and incident to compensation based on *permanent and total disability or death*, from the Office of Federal Employees' Compensation, Department of Labor, Social Security Administration, Railroad Retirement Board, or pursuant to any worker's compensation or employers' liability statute, or commercial insurance, are properly for consideration as "Deductible Expenses." VA Form 21-8416, Request for Information Concerning Medical, Legal or Other Expenses, will be used to develop the amounts the claimant has actually paid during the calendar year and for which he or she has not been (and will not be) reimbursed by insurance or another agency. *For Section 306 pension cases*, this exclusion applies but *one time*; that is, when the disability retirement or other compensation is initially awarded and the legal as well as medical expenses are deductible from the specific disability retirement benefit under 38 CFR 3.262(l)(1). After this one-time (nonrecurring) exclusion, any medical exclusions in these cases are governed by 38 CFR 3.262(l).

NOTE: The amount deducted may not exceed the total (annual) disability retirement or compensation payments to which the expenses are incident. It must also be noted that, when computing countable income, only the balance (if any) remaining after deducting these expenses is subject to the 10 percent reduction of the payments so received.

(3) **Continuing Exclusion.** For Old Law pension cases, in addition to the first year exclusion, the unreimbursed medical expenses paid during any succeeding year related to the disability for which retired are allowed as continuing expenses.

c. **Exclusions From Total Income**

(1) **Unusual Medical Expenses (Section 306 Pension Only).** Unreimbursed medical expenditures which exceed 5 percent of the claimant's reported annual income will be considered unusual 38 CFR 3.262(l). The term "unusual" does not describe the nature of a medical condition but, rather, the "excessive" amount expended for medical purposes (including insurance premiums for health care and medicare premiums) as related to a claimant's resources available for sustaining a reasonable mode of life. If the amount of medical expenses claimed would prevent termination of the award for excessive income, VA Form 21-8416a, Request for Information Concerning Unreimbursed Family Medical Expenses, or equivalent itemized statement will be used in determining whether all or part of the claimed expenditures may be considered unusual medical expenses. Listed in addendum A are items that are to be allowed. This is not an all-inclusive list. All unreimbursed expenses which may reasonably be related to medical care will be allowed.

(a) For purposes of defining "reported annual income," the income specifically excluded by 38 CF 3.261, will be considered "NOT reportable"; *except* for the 10 percent reduction provision under 38 CFR 3.262(e)(1) and (2) pertaining to public or private retirement, annuity or endowment plans (i.e., ***ALL*** of the amount of retirements, annuities, etc., ARE reportable).

NOTE: Donations from public or private relief or welfare organizations are not reportable income under these programs and are itemized on income questionnaires for these cases only to prevent their erroneous inclusion in reporting "Other Income."

(b) The reported income of a spouse, whether earned or unearned, *prior* to the 10 percent reduction of income from retirement, annuities, etc., and to the alternative 38 CFR 3.262(b)(2) or earned income exclusion, will be added to the veteran's reported income as defined above. The 5 percent under 38 CFR 3.262(l) will then be computed (dollars only) for exclusion from the claimed medical expense when determining the allowable deduction.

(c) Generally, unusual medical expenses will be allowed for exclusions after-the-fact, as reported at the end of the year. However, if the income is static and the claimant reports substantial unreimbursed expenses actually paid early in the year, it would be permissible to allow the exclusion during the *current* year. An estimate of anticipated medical expenditures of an unusual nature would not be acceptable in the absence of established facts indicating a clear and reasonable expectation that they will occur. In this regard, when the claimant is in need of regular aid and attendance or nursing home treatment, or there is a history of substantial recurring expenditures for medical condition, the anticipated unusual medical expenses may be prospectively excluded.

NOTE: Allowance of a medical expense exclusion under 38 CFR 3.262(1) for nursing home care expenses will not be granted unless the beneficiary is a patient in a nursing home. This requirement applies equally to cases in which aid and attendance entitlement was established by rating or on the basis of nursing home patient status.

(d) When estimated expenses are allowed and entitlement reflects such exclusion, the amount of actual unreimbursed expenses determined at the end of the year will be used to recompute entitlement for Section 306 or Old Law income limitation purposes, based upon the facts found (38 CFR 3.500(a)).

(e) The total amount of recurring unusual medical expenses will be entered in the complete income information, not just the amount in excess of 5 percent of the reported annual income.

(2) **Last Expenses (Section 306 Cases Only.)** The amount which was paid for the final expenses of the last illness and burial will be allowed as follows:

(a) Payments by a *surviving spouse or child* for the last expenses (including just debts) of the deceased veteran (38 CFR 3.262(m)) or the burial and last expense of a deceased child (38 CFR 3.262(n))

(b) Payments by a *veteran, surviving spouse or child* for the last expenses of the veteran's deceased spouse or child (38 CFR 3.262(n))

(3) **Retired Pay Exclusion (Old Law Cases Only).** An Old Law pensioner may waive an amount of civil service or other retirement income (38 CFR 3.262(h)) in order to keep his or her countable income within the applicable limit (par. 9.08c).

d. **Year of Exclusion.** "Deductible expenses" will be applied toward the income received and/or anticipated for the year during which such expenses are paid. When a recurring (or prospective) exclusion is permitted under the circumstances specified above for established unusual medical expenses, the estimated expenses will be allowed as a continuing deduction. (38 CFR 3.262(l) and (p))

e. **Recurring Expenses.** Unusual medical expenses will not be excluded prospectively unless there are recurring nursing home expenses or other situations in which both income and expense can be reasonably determined. When expenses are excluded prospectively, the award will be subject to any necessary adjustment upon receipt of an amended estimate or Eligibility Verification Report of actual expenditures, under 38 CFR 3.500(a), in accordance with the facts found (subpar. c(1) above).

NOTE: As "recurring" deductions, these will NOT require a January 1 future reduction or termination award line.

f. **Christian Science Practitioners.** Treatments by Christian Science practitioners do not constitute medical care (Administrator's Decision No. 701) and expenses for such services are not to be considered medical expenses for the purpose of the unusual medical expense deduction under in 38 CFR 3.262(l).

g. **Veterans in State Homes, 38 U.S.C. 641.** Many States operate homes for veterans designated as Veterans Homes, Soldiers' Homes, and Soldiers' and Sailors' Homes, etc., furnishing domiciliary care and in some instances nursing home and hospital care. Generally the veterans are charged an amount based upon their income, in addition to that payable under 38 U.S.C. 641, for the care required. Where satisfactory evidence is received that a veteran in a State Home is receiving hospital or nursing home care in a patient status, his or her payments for such care are medical expenses for inclusion in determining unusual medical expenses under 38 CFR 3.262(l).

9.08 ADJUSTMENTS BASED ON CHANGES IN INCOME OR NET WORTH

The net countable income as computed for the current year (received income year) will determine the entitlement for that year. Similarly, and independently, the net countable income as computed for the forthcoming year (expected income year) will determine the entitlement, if any, for the next "expected" year.

NOTE: For clarity and uniformity, and since adjustments are more generally based on income information received on an Eligibility Verification Report, the following terms will be used in the following context:

Protected 1978 Income. The income which supported the rate properly payable December 31, 1978. This income will remain as the "income amount" on the award line unless the spouse dies (in which case his or her income will be dropped, leaving only

the veteran's) or the claimant's received or expected income exceeds the applicable income limitation and termination is in order (in which case the income which supports the termination will be shown on the award line). The anticipated (current) income as discussed below will be for entry to the master record optional income segment.

Anticipated Income. The income previously reported as estimated or expected for the current or, at the time of report, the forthcoming year which was the basis for the current entitlement.

Received Income. The actual income, now revising the report as to receipt during the period covered by the previous estimate (the "current" or "past" year). (NOTE: The net countable income determined therefrom and entered as "Received Income" code, is recorded as "Year -1" in the master record historical segment.)

Expected Income. The new estimate of income anticipated for the forthcoming year, which, when entered, replaces existing master record data in the optional income segment (which will be recorded as "Current Year" code in the master record historical segment).

a. **Requests for Additional Evidence.** A notice of receipt of income should be sufficiently informative to show the sources, rates and dates of receipt of income.

(1) Adjustments may be deferred, or interim adjustment made pending development, when there is a lack of definitive information or the element of reasonable doubt exists (par. 9.03). Payments will not be suspended pending development, unless the report shows a definite increase in received and/or expected income which will require current, end-of-month or end-of-year termination of the payments being made.

(2) When evidence is required to determine entitlement for the current or prior year, the payee will be requested to furnish the necessary data on VA Form 21-4138, Statement in Support of Claim, and/or other appropriate forms as provided in paragraph 9.02.

(a) The request will specify that, if the clarifying evidence is not furnished within 60 days, payments will be discontinued or reduced without further notice. Appropriate control will be established.

(b) If the clarifying evidence required relates to income changes coming within the end-of-year rule (subpar. b below), the claimant will be advised that, if the evidence is not received, payments will be reduced or discontinued effective the appropriate date, subject to further adjustment if the evidence is received within the following calendar year.

b. **Determination of Payment Date.** Reopened awards that provide only for continuity of entitlement with no rate increases are not affected by the provisions of 38 CFR 3.31, i.e., payment will be restored from the date of termination.

c. **Reductions or Discontinuances**

(1) **General--End-of-Year Rule.** If, after the entering of an award at a rate based on anticipated or expected income, reduction or termination is required because there is an increase in annual income, the effective date of reduction or termination will be the first day of the year following that in which the increase occurred. The end-of-year rule will apply to increases in net worth for Section 306 pensioners. (38 CFR 3.660(a)(2))

(a) **Determination of Effective Date.** It cannot be stressed too strongly that the end-of-year rule is applied only for determination of the "effective date" for termination (and not of "what" income is to be counted) and then, only when receipt of additional income (or increase in net worth) requires a termination.

(b) **Adjustment for Current or Past Year.** If a report of increased income is received after an award is entered (or continued) based on anticipated income, and the increase could not reasonably have been anticipated based on the amount(s) actually received from the same source(s) during the preceding year, action will be taken as follows:

1. Except as provided in subparagraph 2 below, if the revised income exceeds the income limitation, a termination will be effected. Regardless of whether the income increase is due to change in recurring income or due to receipt of one-time income (e.g., bequest), 38 CFR 3.960(b) applies and payment of protected pension is to be discontinued (end-of-year). Such terminations are final, except that, if expenses are subsequently claimed and sufficiently reduce the excessive income (restoring continuity), payment of protected pension may be authorized from the date originally discontinued.

2. When termination is required under subparagraph 1 above, if income data available support an immediate award of pension under Public Law 95-588, payment of current law pension may be awarded effective the date that protected pension payment is discontinued as such an award is not an election.* When the award is made, the payee must be informed that, if expenses are submitted for the period during which income exceeded the protected pension income limitation, restoration of protected pension may be in order.

(c) **Adjustment for Expected Income.** Following the basic rule that prospective entitlement will be determined on the payee's estimated annual income, upon receipt of a report of excessive income anticipated for the remainder of the current year and/or for the forthcoming (expected) year, the award will be terminated based on the expected year's income, effective January 1 of the expected year.

(2) **Preparation of Awards.** All awards prepared under subparagraph (1) (b) and (c) above will include complete income data supporting the action taken. When termination is required, the termination award line must show the net countable income supporting the discontinuance of payments.

d. **Waiver of Retirement Income.** In those Old Law protected pension cases (and for the determination of dependency of a parent), for which civil service, or other retirement income specified in 38 CFR 3.262(h) may be waived, the payee may *prospectively* adjust the amount waived for the purpose of keeping annual income for the current or expected year within the applicable income limitation or providing a DIC parent the maximum combined benefits. When a waiver may be in order, the payee will be informed by Authorization of his/her waiver rights and the amount to be waived as provided below.

NOTE: Railroad retirement benefits to veterans are excluded from income for Old Law pension purposes (38 CFR 3.262(g)(2)).

(1) The end-of-year rule does not apply for the year in which a claimant cancels or reduces such a waiver.

(2) If an additional amount of retirement, is received solely as the result of a legislated increase (or cost-of-living adjustment) and not by reason of a change in the amount waived, it will be considered an increase subject to the end-of-year rule. Termination will be effected, as stated in subparagraph b(1) (b) and (c). Old Law cases will be considered on the basis of actual income for purposes of determining continued entitlement.

(3) When the payee reports that a waiver of retirement income has been established or amended, he or she will be requested to furnish a copy of the communication from the retirement source which reflects the gross retirement amount before the waiver and the net amount after the waiver. If necessary, a current income statement will also be requested.

NOTE: The "Gross Monthly Annuity" show on the chart on the civil service award notices (BRI 49-127) is actually the post-waiver amount. Under "REASON FOR ADJUSTMENT" there should be a printed statement to the effect that "WITHOUT WAIVER, YOUR GROSS WOULD BE $___." This is the gross retirement amount prior to waiver.

(4) When determining the amount to be waived, consideration must be given to the income from other sources which is subject to fluctuations, and the claimant should be advised that the waived amount should be sufficient as to not adversely affect continued (rate of) benefits if there may be a foreseeable increase in other income.

(5) To compute the probable amount to be waived, follow these steps:

Step 1. Compute net countable income, exclusive of the retirement benefit.

* not subject to 38 CFR 3.31

Step 2. Subtract this otherwise net countable income from the applicable Old Law pension income limit to obtain the amount of retirement to be paid after waiver.

Step 3. Apply 10 percent exclusion to the *total* annual retirement amount and subtract the amount obtained in step 2 above. The difference (if any), rounded to the next higher even $10, will be the minimum amount to waive from the annual retirement benefit.

NOTE: When there is also income from other sources which is subject to fluctuation, the payee should be cautioned to waive an amount sufficient to cover any foreseeable increase in that other income.

(6) When there is no other different type of "deduction," entered data will utilize the OTH RET expense field, entering the "waived amount" from step 3 above divided by .9 and rounded up as the deduction amount (par. 9 07 c(3)).

EXAMPLE: Veteran with a dependent entitled to $5,040 civil service retirement. He received $2,400 Social Security, $480 wages and $1,200 stock dividends. This example uses the income limit in effect on 12-1-83. Following method outlined in step 2 above:

Step 1.	Earnings	$ 480
	Social Security	2,160[1]
	Dividends	1,200
	Total	$3,840
Step 2.	Limit	$7,919
	Deduct	-3,840
	Difference	$4,079
Step 3.	Civil Service Ret.	$5,040
	Deduct 10 percent	-504[2]
		$4,536
	Deduct (from step 2)	-4,079
	Amount To Waive	$ 457

Application of These Computations		**Income Data for Entry (If applicable)**	**Entry Amounts**	**Computer Countable**
Total C.S. Retirement	$5,040	Earnings	$ 480	$ 480
Waived Amount	457[2]	Social Security	2,400	2,160[1]
Net Retirement	$4,583	C.S. Retirement	5,040	4,536[1]
10 Percent Deduction	-504[2]	Other Income (Dividends)	1,200	1,200
C.S. Ret. Pay Counted as Income	$4,079	(Subtotal)	$9,120	$8,376
		OTH RET Expense ($457) divided by .9 and rounded up*	508 IVAP:	457 $7,919

[1] *10 percent deducted.*
[2] *Rounded up when necessary.*
* *This computation is necessary to compensate for automatic computer edits that would otherwise result in an amount less than the actual amount waived.*

Countable Income:

Earnings	$ 480
Social Security	2,160[1]
C.S. Retirement	4,079
Dividends	1,200
Total Countable Income	$7,919

e. **Veteran Entitled to Compensation.** If the veteran is also entitled to compensation and payments of pension are to be terminated or reduced to a lesser rate as the result of the loss of a dependent, the award will be amended to authorize payment of compensation for any period during which it is the greater benefit without need for an election. (See par. 29.04.)

f. **Increased Net Worth**

(1) **General.** When the issue is raised that net worth may be excessive further development will be undertaken as necessary. VA Forms 21-527, Income—Net Worth and Employment Statement, 21-4100, Statement of Income and Net Worth, 21-6897, Statement of Income and Net Worth—Disability, and 21-8049, Request for Additional Information (Dependency and Indemnity Compensation or Pension Claim) are available for this purpose. (See also pars. 9.04d and 9.27.)

(a) There is no prescribed amount limitation as net worth is a question for resolution after consideration of the facts and circumstances in the individual case.

(b) If the claimant's financial resources are sufficient to meet personal needs, the intent of the law is that no payments may be authorized.

(c) The criteria provided in 38 CFR 3.263 will be applied, taking into consideration the type and amount of property involved, the age and life expectancy of the claimant, the number and state of health of persons dependent upon the claimant for support, and amounts available as income.

(2) **Terminations.** When pension is to be discontinued because of excessive net worth, the adjudicator will prepare a formal determination in accordance with paragraph 14.34 for approval by an authorizer.

(a) VA Form 21-5427, Corpus of Estate Determination, will be used for this purpose, furnishing a full statement of facts concerning the size and composition of the estate and the conclusion reached.

(b) Pursuant to the end-of-year rule under 38 CFR 3.660(a)(2), awards will be terminated effective January 1 of the year following that in which net worth is determined to have become excessive.

NOTE: Restoration of Section 306 or Old Law pension may be made only if the evidence reestablishes eligibility continuously from December 31, 1978.

[(3) **Awards.** The adjudicator or senior adjudicator shall prepare an administrative decision in accordance with paragraph 14.34 for the approval of an authorizer where the adjudicator or senior adjudicator determines entitlement exists and the estate is $35,000 or more. VA Form 21-5427 will be used. Preparation of VA Form 21-5427 is not required where the determination is favorable and estate is less than $35,000 (see also 15.21a).]

g. **Loss of Social Security Entitlement.** When notice of loss of Social Security entitlement is received and the veteran is under age 65, any necessary evidence will be obtained to ascertain whether the veteran remains totally disabled for pension purposes.

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[1] *10 percent deducted.*

9.09 ADJUSTMENT PROCEDURES

a. Awards of pension to veterans and surviving spouses and children may be adjusted or terminated by amended award with complete income information and terminated by stop award actions, as indicated below. For termination of a child(ren)'s award, amended awards will not require income data.

b. **Amended Awards General.** The instructions in this subparagraph are for the preparation and processing of amended awards required to effectuate adjustments required due to recomputation of the protected 1978 income following the loss of a spouse (see par. 9.10), or income in excess of the applicable income limitations for a year under review. Revised expected year income reports will require entry of the new income data via a 49S transaction, but will not require amended award action unless termination is in order due to excessive income. (See also par. 9.10 re changes in marital or dependency status.)

(1) **1978 Adjustments.** Protection applies to the rate *properly* payable on December 31, 1978. If subsequent evidence (amended income statement, reported unusual medical expenses, establishment of misreporting, etc.) indicates the rate paid on that data was incorrect, amended award action will be taken to establish the proper rate and to create the overpayment if a reduction in the established rate is in order. That new rate (with its supporting 1978 income amount on the award line) will be protected.

(2) **Prospective Terminations.** Award action which continues payment for the balance of the current year and terminates payment as of the first of the following year because of excessive actual or estimated income will be accomplished as follows:

(a) The first award line on the amended award should be effective as of the first of the current month, using reason code 96, and the protected 1978 income amount upon which protected rate was based.

(b) Any other previously scheduled award line(s) for the balance of the year will be reinserted with existing reason code(s) and the protected rate.

(c) The termination award line, effective January 1 of the next year will show reason code 11. The income amount entered will be the net countable income which exceeds the income limit and requires termination.

NOTE: If there already is a scheduled termination established in the master record for a date prior to the end of the year (e.g., last child reaches age 18), the revised income estimate will be annotated in the "Remarks" section of the award. It will not be necessary to process the award.

(3) **Retroactive Terminations.** Retroactive termination because of excessive income may be effected by stop award actions using reason code 11 (Excess Income).

9.10 CHANGES IN MARITAL OR DEPENDENCY STATUS

a. **General.** When, pursuant to the instructions in this paragraph (or the provisions of par. 24.16), award adjustment is required as an effective date other than the first day of a year due to a change in marital or dependency status (from "no dependents" to "with a dependent," or vice versa):

(1) Entitlement for each period of different dependency status will be determined on the basis of the income for the full calendar year, as provided in 38 CFR 3.260(f). It is not material whether all or part of the claimant's income was received before or after the change in status, and annual income will NOT be proportionately computed.

(2) If there is an indication that a change in income may have also occurred, any necessary development should be expedited.

b. **Loss of Only (Last) Dependent.** The instructions in paragraph 24.16 will be fully applicable for determinations as to *effective date* for reduction or termination. Once the effective date has been established, a determination as to the veteran or surviving spouse's income on that date must be made. Award action will then be taken as follows:

(1) **Income Within Limit.** If the claimant's current (or expected income for an end-of-year adjustment) is within the income limitation for a veteran or surviving spouse alone and

(a) *The last dependent was a spouse who had no countable 1978 income or a child*, the amended award will provide for reduction to the veteran or surviving spouse alone rate based on protected 1978 income (or to a $5 per month or special aid and attendance rate if the protected 1978 income exceeds $3,770 in a Section 306 case). The claimant's current year IVAP will be entered.

NOTE: If the veteran reached age 78 prior to December 31, 1978, the veteran alone rate will include the 25 percent increase.

(b) *The last dependent was a spouse who had countable 1978 income*, an "adjusted protected 1978 income" must be established by dropping the spouse's income out of the protected 1978 income. (For example, the protected 1978 income consists of $150 interest for the spouse and $200 interest for the veteran. The spouse's $150 would be dropped, leaving an adjusted protected 1978 income of $200.)

NOTE: If combined medical expenses were a factor in determining the protected 1978 income, the entire amount will be retained but the 5 percent exclusion will be based on the veteran's income.

1. If the veteran alone rate, based on the adjusted protected 1978 income (i.e., without the spouse's income) is equal to or less than the rate the veteran was receiving with a dependent, an amended award will be processed, paying the lower rate and showing the adjusted protected 1978 income as the "income amount" on the award line. The veteran's current year IVAP will be entered.

2. If the loss of the spouse and the spouse's income does not serve to reduce the veteran's benefit (i.e., the veteran alone rate without the spouse's income would be greater than rate the veteran was receiving while married), the married rate will be continued. An amended award, effective the day following the date of the spouse's death, will show an award line "income amount" which supports the protected rate, reason code 96, dependency code 00, and the protected (married) rate. The complete income data for entry will be the veteran's recurring year income including recurring expenses. Nonrecurring income and/or expenses (e.g., life insurance, burial expenses) will be annotated in the "Remarks" section. The "Remarks" section of the award will be annotated "Spouse died (date); Veteran protected at married rate M21-1, paragraph 9.10b."

(2) **Income Exceeds Limit.** If the claimant's income will exceed the income limitation for a veteran or surviving spouse alone, benefits will be terminated as of the end of year if applicable (38 CFR 3.660(a)); otherwise, benefits will be terminated as provided in 38 CFR 3.503. Retroactive or DLP terminations may be effected by a stop award action. Prospective terminations will be effected by amended award action as follows:

(a) The first award line will reflect current payments based on the protected 1978 income.

(b) The termination award line will show the current or expected (as opposed to protected 1978) income applicable to that year.

(c) The complete income data for entry will be the current income, including expenses. Nonrecurring expenses will be annotated in the "Remarks" section while recurring expenses will be entered with current year income.

c. **Dependent Established**

(1) **Prior to January 1, 1979.** Additional benefits under Section 306 pension may be paid and a higher income limitation for Old Law pension may be established only for dependents whose dependency status arose on or before December 31, 1978, and for whom any necessary evidence to establish such a status is received timely. (38 CFR 3.401(b), 3.403(c) and 3.960.)

NOTE: When a veteran married on or before December 31, 1978, all of the veteran's income, before and after the date of marriage, will be counted. However, the separate income of the spouse received before the marriage was not available to the veteran and will be disregarded. The spouse's income subsequently received will be computed to determine the amount, if any, to be

added to all countable income. The amount of the exclusion from the spouse's income after marriage will be determined as a proportion of the $1,200 annual exclusion or the full amount of spouse's earnings for that period, whichever is applicable. The end-of-year rule for reduction will not apply under these circumstances.

(2) Subsequent to December 31, 1978

(a) **Dependent Established.** Additional benefits may not be paid for dependents established subsequent to December 31, 1978. However, when a veteran marries or acquires a child, the higher (veteran with dependent) income limitation becomes applicable and the spouse's income, if any, must be considered in determining the veteran's continued entitlement to Section 306 benefits. The award will be amended to show the new dependency code and the protected rate. Use of a special law code will not be required.

NOTE 1: The spouse's income subsequent to the date of marriage will be computed to determine the amount, if any, to be added to the veteran's countable (current as opposed to protected 1978) income. The amount of the exclusion from the spouse's income after marriage will be determined under 38 CFR 3.262(b)(2) annual exclusion or the full amount of the spouse's earnings for that period, whichever is applicable. If, as a result, the veteran's recomputed income will exceed the income limitation for Section 306 pension, benefits will be terminated effective the [last day of the year of the marriage.]

NOTE 2: If there is loss of last dependent making the payee's income excessive, the end-of-year rule is for application. Even if a new dependent is acquired during the same calendar year, only payment of Improved Pension would be for consideration effective January 1 of the following year.

(b) **Marital Status Under Development.** Pend8ing completion of development, payments will be suspended if the countable income exceeds the applicable limitation. If the spouse is established, amended award action is in order to continue paying the protected rate of payment and to enter the spouse's income in the income segment unless the countable income exceeds the applicable limitation and termination of benefits is in order.

(c) **Determination of No Valid Marriage.** Development will be accomplished to determine the validity of the marriage, including a field examination, if necessary. If evidence of a valid marriage cannot be obtained, benefits will be authorized on the basis of a veteran without a spouse, disregarding any income of the claimed spouse. If prior award action was made in anticipation of establishing a spouse, necessary action will be taken to adjust benefits to pay the correct single veteran rate based on only the veteran's income.

d. **Change in Aid and Attendance or Housebound Status.** Additional benefits based on need for aid and attendance or housebound benefits will be paid only if the effective date for such benefits is December 31, 1978, or earlier. If entitlement arises January 1, 1979, or later, the claim will be accepted and referred to the rating board.

9.11 SURVIVING SPOUSE OR CHILD'S AWARD TERMINATED—OTHER BENEFICIARIES

A generated or dictated letter will be used to notify the payee of the discontinuance of an award of pension because of excess income or net worth. In case of termination for failure to return an Eligibility Verification Report, see 38 CFR 3.661(b). (See also par. 13.07e(2) re combined Social Security check to surviving spouse and children.)

a. Surviving Spouse's Award Terminated

(1) **Children in Custody.** When a surviving spouse's award is terminated, the only entitlement for children in custody of the surviving spouse is Improved Pension. When considering eligibility for the children, the surviving spouse's income must be considered.

(2) **Children Out of Custody.** Termination of a surviving spouse's award will not deprive children not in custody of the surviving spouse to continue to receive the same rate of payment which they were receiving as an apportionment. [However, the income limit for children alone under Section 306 or Old Law Pension also applies for continuing eligibility.] The award will contain SL code 10 for audit purposes. Send to VACO (210)

b. **Surviving Spouse Elects Improved Pension.** See chapter 42.

c. **Child's Award Terminated.** When there is no surviving spouse and a child's award is terminated for excess income or net worth (see par. 9.04d), adjustment of the award(s) to any other child(ren) under 38 CFR 3.651 will be deferred pending the expiration of the period within which the terminated award may be reopened and entitlement reestablished for a retroactive period. The award(s) to the remaining child(ren) will be adjusted, when in order, from the date of termination of the child's award, at the rate payable excluding that child. The provisions of 38 CFR 3.31 do not apply as the total benefit payable has been reduced due to loss of a dependent.

d. **Reopened Award for Surviving Spouse or Child**

(1) **Children.** See chapters 39 and 42.

(2) **Spouse.** See chapters 8, 39 and 42.

9.12 SALE OR TRANSFER OF REAL OR PERSONAL PROPERTY

Profit from the sale of real or personal property will be considered income for the purposes of Old Law pension and parents' death compensation. Details as to sales may be obtained by the use of VA Form 21-4185 (par. 9.02). As explained in subparagraph c below, for Section 306 pension, profit realized from the disposition of real or personal property, other than in the course of business, is excluded from income (38 U.S.C. 415(f)(1)(K)). However, when payments are made in installments, amounts received in excess of the sales price will be counted as income. (38 CFR 3.262(k)(5))

NOTE: For Section 306, and Old Law pensions, when installments are received as payment on a sale made prior to the date of current VA entitlement, payments of interest (only) will be counted as income.

a. **Old Law Pension and Parents' Death Compensation Cases.** When the additional income requiring termination of an award arises out of net profit realized on the sale of the claimant's residence, appropriate action will be taken and the payee informed as provided in paragraph 9.08.

(1) The claimant will be informed that such profit may be excluded from computation of income for the calendar year of sale to the extent that it is applied within the same or succeeding calendar year to the purchase of another residence, as provided under 38 CFR 3.262(k)(4), if such fact is reported within 1 year from the date the profit is so applied or from the date of sale, whichever is the later.

(2) If the claimant has purchased or subsequently purchases another residence, he or she will be requested to furnish complete information as to date of settlement, terms of purchase, expenses, amounts personally applied to the purchase price and, when appropriate, the total amount of monthly payment, principal and interest, but exclusive of taxes, etc., applied during the calendar year in which the former residence was sold, and the succeeding calendar year, and the calendar year of purchase if that year immediately preceded the calendar year of sale. The purchase of a lifetime residence in a senior citizen's home is considered equivalent to purchasing another principal dwelling.

(3) Under 38 CFR 3.262(k)(3), the net profit will be determined on the basis of the selling price in relation to the purchase price or value at time of acquisition or, in case of property owned prior thereto, at the date entitlement *to the current VA benefit* was established.

(4) The profit from the sale of property after the veteran's death, which was purchased with the individual funds of both the veteran and spouse, should be considered in proportion to the amounts each contributed in the purchase. The surviving spouse is entitled to recover fully his/her share of the investment, including appreciation of his/her share, before charging him/her with any income from the inherited share of the property.

b. **Transfers for Minimal Consideration.** If real property is transferred to a close relative or other person for minimal consideration, such as $1, a determination will be made as to whether legal right to receive the income from the property was actually

divested. It has been held that if the transferee has full legal right to receive the entire income, it is not to be considered the claimant's income. However, if after such transfer the claimant does have any right, title or interest in the property or income therefrom, then such property and income are considered as the claimant's to the same extent as prior to the transfer. (OP. G.C. 30-57)

c. **Section 306 Pension Cases.** On and after January 1, 1965, for Section 306 pension purposes, the capital gain from the sale of real or personal property is considered an enrichment of the claimant's basic holdings, and is not counted as income unless the claimant engages in repeated or bulk transactions in the nature of a commercial enterprise; e.g., trading in stocks or real estate. Single or occasional instances of purchasing property and resale for profit will not be considered operation of a business (income from which would be counted under 38 CFR 3.262(a)).

(1) If not considered operation of a business, eligibility will not be affected except when, in Section 306 pension cases, the total amount received causes a material increase in net worth, or because of conversion to liquid assets, it is reasonable that some part be used for normal living expenses; or, in any case, by reason of reinvestment there has been a material increase in the monthly or annual income.

(2) It is not material whether the proceeds are used to purchase other property, reinvest in another type of security or for subsistence purposes. Neither the date, manner nor value at time of acquisition is a factor since the consideration for the sale, whether cash, securities, a lien or other property is viewed only as a change in the character of the claimant's assets. Even though there is a cash settlement, the sole question is the extent to which the beneficiary's net worth has been increased or changed in character so that he or she should reasonably be expected to use some part of the capital for support.

(3) When transfer or sale of property is reported and it is not indicated that the transaction was made in the course of a business, continued entitlement will be determined under the criteria in 38 CFR 3.263. A formal finding will be required only as provided in paragraph 9.08c.

(4) Payments to the claimant that have been deferred or are by installment will not be counted as income until there has been received an amount equal to the sales price, irrespective of the fact that a portion may be identified as interest under a note, mortgage, trust or similar legal instrument.

SUBCHAPTER III. INCOME: PARENTS' DEPENDENCY AND INDEMNITY COMPENSATION

9.13 ORIGINAL AND REOPENED AWARDS

a. **General.** Original and reopened DIC awards to parents must always supply complete information as data for entry (pars. 15.20a and 15.33b).

(1) What constitutes receipt of income at a rate which, if continued through the calendar year, would exceed the applicable limitation depends on the facts in the individual case. Broad discretion will be allowed in this determination.

(2) For instructions as to required entries of complete income data for input, see paragraph 15.20a and c; see also paragraph 9.15 re entries when income is proportionately computed.

b. **Prospective Awards and Scheduled Futures**

(1) **Future Commencing Date.** Generally, original and reopened awards should not provide for a future commencing date. However, when so warranted by evidence (usually received during the last 3 months of a year) establishing current nonentitlement because of excessive income in the initial year but subsequent entitlement based on anticipated (reduced) income for the succeeding calendar year, award action may be taken to provide for a commencing date as of February 1 of the forthcoming year. (See par. 15.27b(1) re future award actions.)

(2) **Scheduling Future Termination, Reduction or Increase–Use of Special Law 14.** Original and reopened awards will provide for a termination or change in the rate payable as of January 1 (termination or reduction) or February 1 (increase) of the following year when it is determined that the parent's annual income next year will be different than that for the initial year (38 CFR 3.660).

(a) Special law code 14 will be entered on the first award line, indicating that the rate(s) authorized will be payable for the initial year only, as based on the income amount shown on that award line; and that there is a change in the countable income (and rate payable) for the next year (par. 15.32).

(b) The award line effective January 1 or February 1 of the following year will show reason code 11 (or other appropriate code, e.g., 56, Loss of Spouse or Parent) and special law code "00" (or other applicable special law code), and the income amount applicable that year.

NOTE: If the "other" applicable special law code is entered in the miscellaneous code field, code "00" is the proper award line code entry; the computer update processing will move the miscellaneous code entry to the special law code field for this line.

(c) The complete income data for entry will be that for the following year which will produce IVAP consistent with the income amount entry on that January 1 or February 1 award line.

(d) Future changes in income for any year beyond the immediate next year, even though reasonably anticipated, will not be incorporated as a future date adjustment in the award (use of special law code 14 is restricted to the initial calendar year only) and such an award could not be processed without a resulting error message.

c. **Determination of Maximum Annual DIC Rate.** In accordance with 38 CFR 3.25, the maximum annual DIC rate for a claimant will be determined by marital status. A change in any of these basic factors will change the maximum annual DIC rate and, consequently, the amount of DIC payable. Whenever Social Security benefits are increased as a result of a determination under section 215(i) of the Social Security Act (i.e., cost-of-living increase), the maximum annual DIC rates will also be increased by a like percentage and at the same time. A revised 38 CFR 3.25 will be furnished in connection with each such increase.

d. **Income of Spouse.** Pursuant to 38 CFR 3.262(b)(1), the combined incomes of the parent-payee and spouse, when living together, will be counted in determining net countable income. The only exclusions permitted are 10 percent exclusion of annuities and retirement income and the deductible expenses explained in paragraph 9.14.

9.14 DEDUCTIBLE EXPENSES

a. **General.** In determining net countable income, there are expenses excluded from only specific income, as contrasted with expenses deducted from otherwise net countable income. Entry of amount of "deductible expense" will be required as a part of the complete income information used in computation of "Income for VA Purposes" only as provided in this paragraph. These data will not be entered when used only to determine the income amount entry on an award line for a period for which complete income information is not required. In those cases, the award line "income amount" entry will be sufficient and need only be explained by a notation in "Remarks" on the award form when the circumstances so require.

NOTE: Only recurring expenses are required as part of the master record.

b. **Exclusions From Specific Income**

(1) **Exclusions Determining Net Profit–Not for Entry.** Expenses excluded under 38 CFR 3.262(a)(2) to arrive at income (i.e., net profit) from rentals, business or profession will NOT be for entry as "Deductible Expenses." The net profit amount will be entered as "Earned" or "Other" (whichever is appropriate) in the income segment of the 306 screen.

(2) **Disability Retirement Expenses.** 38 CFR 3.262(i) provides that medical, legal and other paid expenses incurred prior to award of and incident to compensation based on permanent and total disability or death, from the Office of Federal Employees'

Compensation, Department of Labor, Social Security Administration, Railroad Retirement Board, or pursuant to any worker's compensation or employers' liability statute, or commercial insurance, are properly for consideration as "Deductible Expenses." VA Form 21-8416 will be used to develop the amounts the claimant has actually paid during the calendar year and for which he or she has not been (and will not be) reimbursed by insurance or another agency. This exclusion applies but one time, that is, when the disability retirement or other compensation is initially awarded and the legal as well as medical expenses are deductible from the specific disability retirement benefit under 38 CFR 3.262(l)(1). After this one-time (nonrecurring) exclusion, any medical exclusions in these cases are governed by 38 CFR 3.262(l).

NOTE: The amount deducted may not exceed the total (annual) disability retirement or compensation payments to which the expenses are incident. It must also be noted that, when computing countable income, only the balance (if any) remaining after deducting these expenses is subject to the 10 percent reduction of the payments so received.

c. **Exclusions From Total Income**

(1) **Unusual Medical Expenses.** Unreimbursed medical expenditures which exceed 5 percent of the claimant's reported annual income will be considered unusual (38 CFR 3.262(l)). The term "unusual" does not describe the nature of a medical condition but, rather, the "excessive" amount expended for medical purposes (including insurance premiums for health care) as related to a claimant's resources available for sustaining a reasonable mode of life. If the amount of medical expenses claimed bears a reasonable relationship to the claimant's annual reportable income, these unusual medical expenses may be accepted without resort to additional development. If there is no reasonable relationship, or if there is no current income information of record, VA Form 21-8416a will be used in determining whether all or part of the claimed expenditures may be considered unusual medical expenses. "Reasonable relationship" will be considered in terms of the amount a claimant might be expected to pay based on his or her age, physical condition and/or past history for paying such expenses.

(a) For purposes of defining "reported annual income," the income specifically excluded by 38 CFR 3.261 will be considered "NOT reportable," except for the 10 percent reduction provision under 38 CFR 3.262(e)(1) and (2) pertaining to public or private retirement, annuity or endowment plans (i.e., ALL of the amount of retirements, annuities, etc., ARE reportable).

NOTE: Donations from public or private relief or welfare organizations are not reportable income under these programs and are itemized on income questionnaires for these cases only to prevent their erroneous inclusion in reporting "Other Income."

(b) For DIC parents living together, or for a remarried DIC parent, the combined income, whether earned or unearned, prior to the 10 percent reduction of income from retirement, annuities, etc., is considered reportable income as defined above. The 5 percent under 38 CFR 3.262(l) will be computed using combined income (dollars only), for exclusion from the claimed medical expense when determining the allowable deduction.

(c) Generally, unusual medical expenses will be allowed for exclusions after-the-fact, as reported on the Eligibility Verification Report.

(d) However, if the income is static and the claimant reports substantial unreimbursed expenses actually paid early in the reporting period, it would be permissible to allow the exclusion during that period. An estimate of anticipated medical expenditures of an unusual nature would not be acceptable in the absence of established facts indicating a clear and reasonable expectation that they will occur. In this regard, when the claimant is in need of regular aid and attendance or nursing home treatment, or there is a history of substantial recurring expenditures for medical condition, the anticipated unusual medical expenses may be prospectively excluded.

NOTE: Allowance of a medical expense exclusion under 38 CFR 3.262(l) for nursing home care expenses will not be granted unless the beneficiary is a patient in a nursing home. This requirement applies equally to cases in which aid and attendance entitlement was established by rating or on the basis of nursing home patient status.

(e) When estimated expenses are allowed and the DIC entitlement reflects such exclusion, the amount of actual unreimbursed expenses determined upon receipt of the Eligibility Verification Report will be used to recompute entitlement for patients' DIC award adjustment purposes, based upon the facts found (38 CFR 3.500(a)).

(f) The total amount of recurring unusual medical expenses will be entered in the medical expense field, not just the amount in excess of 5 percent of the reported annual income.

(2) **Last Expenses.** The amount deductible from the otherwise net countable income, which was paid for the final expenses of the last illness and burial will be allowed when paid by a parent for the last expenses (and just debts) of the deceased veteran or parent's deceased spouse (38 CFR 3.262(o)).

(3) **Retired Pay Exclusion.** Although not a deduction for an "expense," a continuing expense will be used for the continuing exclusion when an amount of civil service or other retirement income is waived (38 CFR 3.262(h)) in order to keep the payee's income within the applicable (or desired) limit. (See par. 9.16d.)

d. **Year of Exclusion.** "Deductible expenses" will be applied toward the income received and or anticipated for the year during which such expenses are paid. When a recurring (or prospective) exclusion is permitted under the circumstances specified above for established unusual medical expenses, the estimated expenses will be allowed as a continuing deduction. (38 CFR 3.262(l) and (p).)

(1) **Recurring Expense.** As already stated, unusual medical expenses generally will not be excluded prospectively. However, in the exceptional case, such as when there are recurring nursing home expenses or other situations and both income and expense can be reasonably determined, the deduction of medical expenses may be allowed as a continuing expense. (See par. 9.22a(3)(a) and (b) re effective dates.)

(2) **Prospective Expense.** When expenses are excluded prospectively, the award will be subject to any necessary adjustment upon receipt of an amended estimate or income questionnaire report of actual expenditures, under 38 CFR 3.500(a), in accordance with the facts found (subpar. c(1) above).

9.15 PROPORTIONATE COMPUTATION OF INCOME

a. **General.** Proportionate income computations are used to expand the claimant's income for a remaining part of the year of initial entitlement to an annual amount, so that the monthly rate payable may be determined, pursuant to 38 CFR 3.260(c), (d) and (e).

b. **When Authorized.** Proportionate computations will not be made for reopened awards when basic entitlement continued, but payment was denied or terminated because of excess income or net worth, or a change in dependency status (other than marriage of a veteran for which proportionate computation of the spouse's income will be authorized).

NOTE: When deductible medical or other expenses are subsequently reported for the year in which proportionate computation may be made, income for that year will be recomputed on both a proportionate and calendar year basis and the award adjusted on the basis of the more advantageous determination. For proportionate computation purposes, only those expenses paid from date of entitlement to the end of the year which exceed 5 percent of the reportable income for that period are deductible.

c. **When Necessary.** In such instances, the rate will be determined on the basis of the annual income as proportionately computed or on a calendar year income basis, whichever is more advantageous to the claimant. When the income for the entire calendar year (less allowable expenses for that year) is such as to provide entitlement to the maximum rate, it will never be necessary to resort to proportionate computation.

d. **Prior Income Disregarded.** When proportionately computing the income for the period from the date of entitlement to the end of the calendar year, income received (and expenses paid) prior to that period is disregarded.

e. **Method of Computing.** Proportionate income computation will be made on the basis of the portion of the calendar year remaining from the effective date on which entitlement begins.

EXAMPLE: If entitlement begins on September 29 of a non-leap year, there would be 94/365ths of the year remaining. Assuming claimant's income from that date will be $202, we determine that the annual income, proportionately computed, would be $784.

The "Tables for Expending Proportionate Income Amounts" provided in appendix C to this manual may be used for these computations; that is, in the above example, the factor for September 29 (3.8829) would be multiplied by the income for the remaining portion of the year ($202), giving the resultant ($784) for the income on an annual basis.

NOTE: All cents in the resultant are dropped to produce a dollar amount only.

f. **Award Entries—Need for Special Law Code 14**

(1) When the proportionately computed income provides the greater benefit from the date of entitlement to the end of the initial year:

(a) The "income amount" on the award line(s) for the year of initial entitlement will be the proportionately computed income (for successful computer audit or computation of the rate(s) authorized by such award line(s)). In "Remarks," enter "Income proportionately computed based on $ _____ income from _____(date)_____," showing the actual net countable income from the date of entitlement (subpar. d above) to the end of the calendar year.

(b) Special law code 14 will be entered (and continued) on the award line(s) provided for payment during the initial year of entitlement.

(c) The award must also provide a reason 11 (or other applicable code) award line effective January 1 or February 1 of the year following the initial year, showing the next year's estimated income amount, the rate payable (or "None") based thereon and special law code "00."

NOTE: Any other applicable special law code will be entered as the miscellaneous code (see par. 9.13b(2)(b)).

(d) The complete income information for entry, for such original or reopened award based on proportionate computation for the initial year, will always be the income estimated for the next full calendar year (which will compute to the income amount entry on the special law code 00 line effective the date of adjustment).

(e) A dictated letter is required to explain that proportionate computation was made.

EXCEPTION: If the award will be processed in cycle 0 October or a later cycle in the initial year, special law code 14 will NOT be required (because the complete income data entered in that time frame must be that for the "expected" year as provided in par. 15.20c(2)(a)).

(2) When proportionate computation will not provide the greater benefit, special law code 14 will not be used. The income amount for entry on the initial award line will be the total countable income for the full initial calendar year, as generally provided. The complete income data for entry will be determined under the regular rule. (See par. 15.20c.)

9.16 ADJUSTMENTS BASED ON CHANGES IN INCOME

The net countable income as computed for the current or past year (received income year) will determine the entitlement for that year. Similarly, and independently, the net countable income as computed for the forthcoming year (expected income year) will determine the entitlement, if any, for the next "expected" year. These computations will determine the rates payable.

a. **Requests for Additional Evidence.** A notice of receipt of income should be sufficiently informative to show the sources, rates and dates of receipt of income.

(1) **Deferred Adjustment.** Adjustments may be deferred or interim adjustment made pending development, when there is a lack of definitive information or the element of reasonable doubt exists (par. 9.03). Payments will not be suspended pending development.

(2) **Income Requests.** When evidence is required to determine entitlement for the current or prior year, the payee will be requested to furnish the necessary data on VA Form 21-4138 and/or other appropriate forms as provided in paragraph 9.02.

(a) The request will specify that, if the clarifying evidence is not furnished within 60 days, payments will be discontinued or reduced without further notice. Appropriate control will be established.

(b) If the clarifying evidence required relates to income changes coming within the end-of-month rule (subpar. c below), the claimant will be advised that if the evidence is not received, payments will be reduced or discontinued effective the appropriate date, subject to further adjustment if the evidence is received within the following calendar year.

b. **Award or Increase.** When payments have been deferred or paid at a lower rate (par. 9.03), or disallowed, terminated or reduced because of income, received or anticipated, payments may be awarded, resumed or increased in accordance with the following.

(1) **Retroactive Adjustment.** If the prior action was based on anticipated income, an award or increased award may be made in accordance with the facts found provided the evidence requiring reconsideration is received within the same or the succeeding calendar year. (38 CFR 3.660(b)(1)).

(2) **Current or Future Adjustment.** If the prior action was proper, based on actual income, and evidence establishing entitlement or increase in rate is received within the following calendar year, entitlement to an award or increased award will be as of the first of that calendar year (38 CFR 3.660(b)(2)).

(3) **Determination of Payment Date.** The effective date for commencement of payment as opposed to date of entitlement will be determined by 38 CFR 3.31.

c. **Reductions or Discontinuances**

(1) **General End-of-Month Rule.** If, after the entry of an award at a rate based on anticipated or expected income, reduction or termination is required because there is an increase in annual income, the effective date of reduction or termination will be the first day of the month following that in which the increase occurred.

(a) **Determination of Effective Date.** It cannot be stressed too strongly that the end-of-month rule is applied only for determination of the "effective date" for reduction or termination (and not of "what" income is to be counted) and then, only when receipt of additional income (or increase in net worth) requires a reduction or termination.

(b) **Use of Special Law Code 18.** When the end-of-month rule applies to a DIC parent, the need for entry of a special law code 18 will be determined by the point in time at which the award is prepared. In most instances the award will not be prepared until after the month in which the increased income occurred. Such an award will show the reduction effective the first of the month following the increase in income and the revised income amount entry on the award line will be supported by entry of the complete income data. Special law code 18 will not be required. However, if the award is prepared during (or earlier than) the month in which the increase occurs (i.e., the adjustment will be prospective), it will provide an award line effective the first of the current month, showing the "protected rate" and special law code 18, followed by an award line reducing or terminating payments effective the first day of the month following the month of increased income. The special law code will be zeroed out on this award line. The revised income data will be for entry.

(2) **Action on Notice of Receipt of Additional Income**

(a) **Adjustment for Current or Past Year.** If increased income is received after an award is entered (or continued) based on anticipated income, and the increase could not reasonably have been anticipated based on the amount(s) actually received from the same source(s) during the preceding year, termination or reduction will be effected as of the end of the calendar month in which the income increase occurs.

NOTE: Income changes prior to January 1, 1979, will be considered only under the end-of-year rule in effect prior to Public Law 95-588.

(b) **Adjustment for Expected Income.** Following the basic rule that prospective entitlement will be determined on the payee's estimated annual income, upon receipt of report of income anticipated for the remainder of the current year ~~and or for the forthcoming (expected) year~~, the award will be terminated or reduced to the rate payable based on ~~the expected year's income~~ current (?) income, effective the first of the month following receipt of increased income.

d. **Waiver of Retirement Income.** Civil service retirement and other retirement incomes specified in 38 CFR 3.262(h) may be waived and will not be considered as income for the purpose of determining dependency of a parent or eligibility of a parent for DIC if a waiver has been effected. Waivers may be made prospectively in order to provide payment of maximum combined VA benefits. Authorization will advise payees of the right of waiver and of the amount of retirement benefits to be waived, if appropriate, as follows:

(1) The end-of-month rule does not apply for the year in which a claimant cancels or reduces such a waiver.

(2) If an additional amount of retirement income is received solely as the result of a legislated increase (or cost-of-living adjustment) and not by reason of a change in the amount waived, it will be considered an increase subject to end-of-month rule. Reduction or termination will be effected, as stated in subparagraph c(1)(b). DIC cases which are terminated may be reopened on the basis of revised waiver.

(3) When the payee reports that a waiver of retirement income has been established or amended, he or she will be requested to furnish a copy of the communication from the retirement source which reflects the gross retirement amount before the waiver and the net amount after the waiver. If necessary, a current income statement will also be requested.

NOTE: The "Gross Monthly Annuity" shown on the chart on the civil service award notices (BRI 49-127) is actually the post-waiver amount. Under "REASON FOR ADJUSTMENT" there should be a printed statement to the effect that "WITHOUT WAIVER, YOUR GROSS WOULD BE $ _____." This is the gross retirement amount prior to waiver.

(4) When determining the amount to be waived, consideration must be given to the income from other sources which is subject to fluctuations, and the claimant should be advised that the waived amount should be sufficient as to not adversely affect continued (rate of) benefits if there may be a foreseeable increase in other income.

(5) To compute the probable amount to be waived, follow these steps:

Step 1. Compute net countable income, exclusive of the retirement benefit.

Step 2. Subtract this otherwise net countable income from the applicable maximum DIC parent income limit to obtain the amount of retirement to be paid after waiver.

Step 3. Apply 10 percent exclusion to the total annual retirement amount and subtract the amount obtained in step 2 above. The difference (if any), rounded to the next higher even $10, will be the minimum amount to waive from the annual retirement benefit.

NOTE: When there is also income from other sources which is subject to fluctuation, the payee should be cautioned to waive an amount sufficient to cover any foreseeable increase in that other income.

(6) When there is no other different type of "deduction," entered data will utilize the OTH RET expense field entering the "waived amount" from step 3 above divided by .9 and rounded up as the deduction amount (par. 9.14c(3)).

EXAMPLE: Sole surviving parent with entitlement to A&A receives $3,048 civil service retirement. The parent also receives $2,400 Social Security, $480 wages and $1,200 stock dividends. This example uses the income limit in effect on 12-1-83. Following method outlined above:

Step 1.	Earnings	$ 480
	Social Security	2,160[1]
	Dividends	1,200
	Total	$3,840
Step 2.	Limit	$6,273
	Deduct	-3,840
	Difference	$2,433
Step 3.	Civil Service Ret.	$3,048
	Deduct 10 percent	-305[2]
		$2,743
	Deduct (from step 2)	-2,433
	Amount to Waive	$ 310

Application of These Computations		Income Data for Entry (If applicable)	Entry Amounts	Computer Countable
Total C.S. Ret.	$3,048	Earnings	$ 480	$ 480
Waived Amount	310[2]	Social Security	2,400	2,160[1]
Net Retirement	$2,738	C.S. Retirement	3,048	2,743[1]
10 Percent Deduction	-305[2]	Other Income (Dividends)	1,200	1,200
C.S. Ret. Pay Counted as Income	$2,433	(Subtotal)	7,128	6,583
		OTH RET Expense ($310) divided by .9 and rounded up*	345 IVAP	310 $6,273

Countable Income:

Earnings	$ 480
Social Security	2,160
C.S. Ret.	2,433
Dividends	1,200
Total Countable Income	$6,273

9.17 ADJUSTMENT PROCEDURES

Awards of DIC to parents may be adjusted by amended award with complete income information and terminated by stop award actions as indicated below.

a. **Amended Awards–General.** The instructions in this subparagraph are for the preparation and processing of amended awards required to effectuate adjustments required solely due to changes in a parent's income. (See par. 9.18 when changes in marital or dependency status are also involved.)

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[1] *10 percent deducted.*
[2] *Rounded up when necessary.*
**This computation is necessary to compensate for automatic computer edits that would otherwise result in an amount less than the actual amount waived.*

(1) **Prospective Adjustments–Special Law Code 18.** When, in the application of the end-of-month rule, payments are to be continued at the current rate (based on income as previously estimated) because the new reported actual or revised estimate of income requires reduction or termination as of the first of the month following that in which the increased income was or is to be received, special law code 18 will be used for the "protected" rate period. Use of this code will direct computer audit comparison of "Income for VA Purposes" with the income amount in the future award segment, at the expiration of the protected rate period, and acceptance of the interim rate for the previously estimated income amount during the protected period. (See par. 15.20c.)

(a) The first award line on the amended award should be effective as of the first of the current month, using reason code 96 with special law code 18, and the income amount previously estimated (upon which the protected rate was based.)

NOTE: Any other applicable special law code will be entered. (See pars. 15.23b(13), and 15.32b and c.)

(b) Any other previously scheduled award line(s) which will occur prior to the date of reduction or termination will be reinserted with existing reason code(s) and the protected rate.

(c) The award line, effective the first of the month following that in which the increased income occurred, at which the protection is discontinued, will show reason code 11 and special law code "00" (or other applicable code). The income amount entered will be the new net countable income based on the revised estimate, which will agree with (and be supported by) the complete income data entered with this amended award.

(2) **Retroactive and Current Adjustments**

(a) The need for accompanying complete income information (transaction 49S) to support the amended award will be determined by whether the change in annual income will require a change in the existing complete income segment to support the continuing rate; or if such change in annual income was solely for a prior month and, therefore, only historical. The "actual" income code (the income amount entry on the award line for a prior period) supplies this historical information.

(b) For amended awards authorizing retroactive or current adjustments in the present calendar year, the income amount entered on an award line reducing or increasing the rate payable, will be the revised actual countable income for the calendar year period. The complete income data for entry will support the income amount entry on the award line.

b. **Retroactive Terminations.** Retroactive termination because of excessive income or termination (retroactive or prospective) because of net worth may be effected by stop award actions using reason code 11 (Excess Income).

9.18 CHANGES IN MARITAL OR DEPENDENCY STATUS

a. **General.** Any change in a parent's marital status from that of parents living together or a parent with a spouse to sole surviving parent or parent not living with spouse, whether by reason of the death of the other surviving parent or separation, divorce, remarriage or reconciliation, requires application of a different rate table in the determination of the subsequent entitlement. Upon notice of a change in marital status, FL 21-114 will be used to request a statement of current income and such additional information as may be required, to be submitted within 60 days. (See par. 9.09.)

(1) Unless contradicted by other evidence on hand, payments will not be suspended, and submission of the marriage certificate or divorce decree and such other evidence as necessary will be requested only if required by 38 CFR 3.213 or necessitated by conflicting information of record. (Also, see 38 CFR 3.205 and 3.206.)

(2) If the required evidence is not received within the specified period, payment will be discontinued as of date of last payment, using reason code 16. (38 CFR 3.500(v))

b. **Marital Adjustments–General**

(1) **Death of Other Parent.** Upon the death of one of two parents, appropriate action will be taken to terminate the award to the deceased parent, effective the first of the month of death (38 CFR 3.500(g)(1)). The provisions of 38 CFR 3.651 will be applied when the evidence establishes entitlement to payment at a greater rate effective from the date of termination of the award for the deceased parent (using reason code 56).

(2) **Gain of Spouse–Higher Limit.** The entitlement date of increased rate payable by reason of the applicability of a higher income increment due to change in marital status (to a parent with a spouse) will be as of the date of marriage or, if because of resumed cohabitation, from the date of notice of marital status change constituting a claim for increase (38 CFR 3.660(c)). Reason code 15 (Parent Married) will be used.

(3) **Loss of Spouse–Lower Limit.** When, by reason of the applicability of a lower income increment (change to parent without a spouse), the award is to be reduced or terminated, the end-of-month rule will be applied in case of death or divorce, pursuant to 38 CFR 3.660 (a)(2); otherwise, the date of reduction or termination will be determined in accordance with the facts found.

c. **Marital Adjustments–Income Changes**

(1) **Gain of Spouse–Increased Income.** When a DIC parent marries, the separate income received before the (re)marriage was not available to the DIC parent and will be disregarded. The spouse's income subsequently received will be computed to determine the amount to be added to all countable income. Any reduction or termination required because of increased income will be made effective the date of the dependency change. The end-of-month rule will not be applicable under these circumstances.

(2) **Gain of Spouse–Decrease in Income.** Entitlement for each period of different dependent status will be determined on the basis of the income for the full calendar year, as provided in 38 CFR 3.260(f). It is not material whether all or part of the claimant's income was received before or after the change in status. Any income received by the spouse subsequent to the (re)marriage will be added to the countable income.

NOTE: If the application of a different rate table results in reduction of the rate previously paid the claimant, the end-of-month rule will not be applicable. The required reduction will be made effective the date of the dependency change.

(3) **Loss of Spouse–Increased Income.** The end-of-month rule will govern as to the effective date of reduction or termination due to loss of spouse and the increase in countable income.

EXAMPLE: DIC mother is receiving DIC as one of two parents, not living with spouse. Notice of death of veteran's father on July 23 received with statement that mother received commercial life insurance on August 15, increasing her annual countable income. End-of-month rule requires on August 1 dependency adjustment and September 1 income adjustment.

NOTE: Complete income data to be entered will be the revised annual income.

(4) **Loss of Spouse–Decrease in Income.** When there has been a decrease in countable income for the year of loss, a determination must be made as to the rates payable for the separate periods. Included in this requirement will be the recomputation of income when a married parent loses a spouse and that spouse's income.

EXAMPLE: Remarried DIC parent (one of two surviving parents) is receiving monthly benefits based on recurring annual income of $1,400. The spouse (who had no income) dies July 19. Upon establishing that $1,100 was paid for the expenses of the last illness and burial the parent's income for the year of death would be reduced to $300. The parent will be entitled as a remarried parent living with spouse from January through July, and as one of two parents from August through December.

d. **Failure To Return Eligibility Verification Report.** The award to a parent in receipt of DIC will be terminated as provided in 38 CFR 3.661(b) (see par. 9.47a) for failure to return the Eligibility Verification Report. Termination of one parent's DIC award will have no effect on payments to the other parent in the case; however, since the rate payable to any parent is determined without regard to the entitlement of the other parent to continued payment.

9.19 SALE OR TRANSFER OF REAL OR PERSONAL PROPERTY

Profit realized from the disposition of real or personal property, other than in the course of business, is excluded from income (38 U.S.C. 415(f)(1)(K)). However, when payments are made in installments, amounts received in excess of the sales price will be counted as income. (38 CFR 3.262(k)(5)).

NOTE: When installments are received as payment on a sale made prior to the date of current VA entitlement, payments of interest (only) will be counted as income.

a. **General.** On or after January 1, 1967, the capital gain from the sale of real or personal property is considered an enrichment of the claimant's basic holdings, and is not counted as income unless the claimant engages in repeated or bulk transactions in the nature of a commercial enterprise; e.g., trading in stocks or real estate. Single or occasional instances of purchasing property and resale for profit will not be considered operation of a business (income from which would be counted under 38 CFR 3.262(a)).

(1) If not considered operation of a business, eligibility will not be affected because of conversion to liquid assets, it is reasonable that some part be used for normal living expenses; or, in any case, by reason of reinvestment there has been a material increase in the monthly or annual income.

(2) It is not material whether the proceeds are used to purchase other property, reinvest in another type of security or for subsistence purposes. Neither the date, manner nor value at time of acquisition is a factor since the consideration for the sale, whether cash, securities, a lien or other property is viewed only as a change in the character of the claimant's assets.

(3) Payments to the claimant that have been deferred or are by installments will not be counted as income until an amount equal to the sales price has been received, irrespective of the fact that a portion may be identified as interest under a note, mortgage, trust or similar legal instrument.

b. **Transfer for Minimal Consideration.** If real property is transferred to a close relative or other person for minimal consideration, such as $1, a determination will be made as to whether legal right to receive the income from property was actually divested. It has been held that if the transferee has full legal right to receive the entire income, it is not to be considered the claimant's income. However, if after such transfer the claimant does have any right, title or interest in the property or income therefrom, then such property and income are considered as the claimant's to the same extent as prior to the transfer. (Op. G.C. 20-57)

SUBCHAPTER IV. INCOME (IMPROVED PENSION)

9.20 ORIGINAL AND REOPENED AWARDS BASED ON ANTICIPATED INCOME

a. **General.** Original and reopened pension awards to veterans, surviving spouses and children must always supply complete income information as data for entry (see ch. 15).

(1) Basic eligibility and the rate payable will be based on the claimant's estimate of income expected for the 12-month period following the date of entitlement. (See par. 9.03 re deferred determinations, subpar. e re effective dates for future receipt of income and par. 9.23 re subsequent income adjustments.)

NOTE: The rate payable to a veteran may be based on the veteran's estimate of income expected for the 12-month period following the date of claim, if more advantageous to the veteran (38 CFR 3.400 b(1)).

(2) Pension entitlement will be computed on an annual basis (maximum annual pension rate—countable income = pension entitlement).

(3) [As of December 1, 1985,] benefits to veterans, surviving spouses and children will be paid less frequently than monthly if the annual rate payable is less than [$228].

NOTE: The net award amount for each payee (primary or apportionee) will determine whether payments will be less frequent than monthly.

(a) Payments shall be made every 3 months on or about March 1, June 1, September 1 and December 1 if the annual rate payable is at least [$144] but less than [$228].

(b) Payments shall be made every 6 months on or about June 1 and December 1, if the annual rate of payment is at least [$72] but less than [$144].

(c) Payments shall be made annually on or about June 1, if the annual rate payable is less than [$72].

(d) Payments of less than $1 annually shall not be made.

(e) The processing of an original, reopened or amended award which authorizes retroactive benefits will release all amounts payable through the date of last payment, provided that the retroactive amount due is [$19] or greater. For example, an original award authorizing [$12] monthly effective February 1, is processed in an April cycle. The computer will generate payment of [$24] for the period February 1-March 31. The next payment will be on or about June 1 and will cover the period April 1-May 31. If the retroactive amount is less than [$19], it will be included in the next regularly scheduled payment.

b. **Scheduling Future Dependency Losses.** Original and reopened awards will provide for future changes due to children reaching age 18 or terminating approved schooling. Not only will the maximum annual pension rate be affected by such a change, but if the child had countable income, the IVAP must be recomputed to exclude that income. If the loss of the child and that child's income warrants an increase in the pension rate, the increase is not payable until the first of the following month (38 CFR 3.31). No special law code will be necessary to justify this entry of an amended "Income Amount" on such a future award line. The award must be GAPPED as shown in the following example:

403 COMPENSATION AND PENSION AWARD

FILE NUMBER				END PRODUCT					NAME	
DATE	RSN	RATE	EC	DISAB	DEP	S H	INC	SLC	WITHHOLD	DED-OFFSET
09-01-84	00	580.00	7L	PT	11/11	0 0	01200			
12-01-84	37	603.00	7L	PT	11/11	0 0	01200			
05-01-00	24	623.00	7L	PT	10/10	0 0	00000			

c. **Determination of Maximum Annual Pension Rate.** In accordance with 38 CFR 3.23 and 3.24, the maximum annual pension rate for a claimant will be determined by type of payee (veteran, surviving spouse or child), dependency status, entitlement to aid and attendance or housebound benefits and entitlement to the Mexican border period World War I service supplement. A change in any of these basic factors (e.g., loss of a dependent, establishment of aid and attendance entitlement) will change the maximum annual pension rate and, consequently, the amount of pension payable. Whenever Social Security benefits are increased as a result of a determination under section 215(i) of the Social Security Act (i.e., cost-of-living increase), the maximum annual pension rates will also be increased by a like percentage and at the same time. Revised 38 CFR 3.23 and 3.24 will be furnished in connection with each such increase.

(1) **Veteran With Mexican Border Period or World War I Service.** Veterans with Mexican border period or World War I service are entitled to an additional (see 38 CFR 3.23(c)) increase in their basic maximum annual pension rate. The supplement is not applicable to a surviving spouse.

NOTE: This additional increase is not a guaranteed yearly pension.

(2) **Veterans Who Are Married to Each Other.** A special combined maximum annual pension rate applies to veterans who are married to each other. Payments will be authorized by a single award unless one spouse requests separate payments or both veterans have special monthly pension entitlements (see par. 23.03b(5)). When separate payments are requested, the rate payable will be computed by establishing the maximum annual pension rate for each spouse as one-half of the special combined maximum annual pension rate, including the additional amount payable by reason of the need for aid and attendance or being housebound entitlement to Mexican border period World War I supplement or dependency status. The maximum annual pension rate for each spouse will be reduced by one-half of the combined income. (See ch. 15 for entries on awards.)

(3) **Consideration of Age of Majority.** The various State ages of majority are important only for check payment purposes. Since the child's status prior to 18 will continue beyond age 18, income determinations generally will continue as prior to age 18. This does not mean, however, that circumstances do not change so that some flexibility may be required, particularly as to the availability of a child's income. The definition of a child for income purposes under improved pension includes all types of children defined as in title 38, United States Code. Therefore, an in-custody child of a veteran, surviving spouse, or other person responsible for support will generally remain in the family unit for income purposes while attending school until attaining age 23 regardless of whether or not the child is physically residing in the household.

(4) **Child Alone or Out of Custody (Death Benefits Only).** The maximum annual pension rate for a child alone or out of the custody of the surviving spouse will be determined by whether the child is in the custody of a person legally responsible for his or her support. (See 38 CFR 3.57(D) for definition of term "child custody" and also par. 9.26 re status of child when surviving spouse is not entitled.)

(a) **Child Not in Custody of Person Legally Responsible for Support.** This status includes children in the legal custody of an institution. The maximum annual pension rate provided by 38 CFR 3.24 will be reduced by the child's countable income.

NOTE: A child living with someone other than the surviving spouse (regardless of whether the surviving spouse is providing support) does not qualify under this subparagraph as long as the surviving spouse retains legal custody, and thus legal responsibility for providing for the child. (38 CFR 3.57(d))

(b) **Child in Custody of Person Legally Responsible for Support.** The rate payable to such a child will be the lesser of the following:

1. The difference between the maximum annual pension rate for a child alone (38 CFR 3.24) and the annual income of a child; or

2. The difference between the maximum annual pension rate for a surviving spouse and the child(ren) in custody (38 CFR 3.24) and the combined annual income of the child(ren) and the legal custodian. When there is more than one child in the custody of a single legal custodian, payments will be made through a consolidated award with no statement of the "share" for each child. Any child with an income in excess of the limit for a child alone will be ineligible for benefits and will not be a factor in the above computation.

NOTE: If the child(ren) is in the custody of a surviving spouse, the surviving spouse is the "person legally responsible for support."

d. Determination of Net Countable Income

(1) **General.** In determining entitlement to pension, the applicable maximum annual pension rate will be reduced by the net countable income for the 12-month period following the date of entitlement. The general rule for an original award or a reopened award with an effective date subsequent to the termination of the previous award is that deductions from and additions to income during the initial year will necessitate annualization from the beginning date of the award. However, procedures set forth in paragraph 9.03 are for application when contingency income is a factor. In addition to the provisions of 38 CFR 3.271 and 3.272, the following rules apply to computations of net countable income.

(a) Only the dollar amounts of annual income from specific sources will be used. All cents will be dropped. The final resultant net countable income (dollars only), will be for award line entry as the "Income Amount" and for determinations of the payee's entitlement (i.e., maximum annual pension rate minus countable income).

(b) The net countable income upon which the payee's entitlement will be based may involve separate computation steps, depending on whether there is only the payee's income or also the income of a spouse and/or a child, and whether there are any deductible expenses to be considered in the total computation. (See par. 9.22.)

(c) The claimant's "basic" net countable income will be computed by adding the income (dollars only) from earnings, social security, any other retirement or annuity and all other countable income for the year. Further computation, if any is required, will be governed by the other paragraphs in this subchapter.

(d) In death cases, any expenses of last illness and burial paid by family members prior to the date of the veteran's death are for consideration in computing the family's income for VA purposes. Even though entitlement to Improved Pension may be the 1st day of the month of death (par. 39.04), the date of death is considered the date of entitlement for purposes of computing income.

(e) When, in an original or reopened claim, a dependency loss has occurred subsequent to the date of entitlement but prior to award action, any income for that dependent will be considered as nonrecurring income for that dependent and will be added to the otherwise countable income for the claimant. The end-of-month rule for a dependency loss will not be applicable since the loss occurred prior to award action.

NOTE: In the following examples, income is annualized for 12 months following the effective date of entitlement. Actual award dates reflect the periods of payment under 38 CFR 3.31, which is less than 12 months.

EXAMPLE: An original claim, received July 8, shows the only income for the veteran and spouse to be social security of $200 monthly and $100 monthly, respectively. Prior to award action, the spouse dies on August 15. Countable income from July 8 will consist of $2,400 for the veteran and $100 (one social security check) for the spouse. Special law code 14 will be for application from August 1 (payment date per 38 CFR 3.31) through July 31 of the following year after which it will be zeroed out and the veteran's countable income would be $2,400. Dependency code 10 will be used from August 1 through August 15, after which the dependency code is 00.

(2) **Annualized Income.** The basic concept underlying Improved Pension is that at any given time, a claimant's countable income plus his or her pension benefits, *projected over a 12-month period*, will establish a given level (or rate) of income (i.e., the applicable maximum annual pension rate). For example, on January 1, a single veteran has monthly private retirement of $100, or a yearly income of $1,200. His or her yearly pension entitlement would be $4,509. In April, the veteran reports that the monthly retirement payments have increased to $150, *for a yearly rate of countable income of $1,800 ($150 X 12)*. To provide for a maximum annual pension rate over the next 12 months, pension entitlement must be reduced to $3,909 yearly. This projection of income 12 months from the date of entitlement to pension or the effective date of a change in income is called annualization of income.

(a) One of the corollaries of annualized income computation is that there will generally be no need for a future January 1 reduction or termination award line due solely to a mid-year change in recurring income, since the 12-month rate of income ($150 X 12) projected at the time of the increase will be identical to that projected by the annual income questionnaire for the forthcoming year.

(b) Any income source which is recurring can be annualized. For example, on a reopened claim, the claimant shows monthly social security of $100, weekly net rental income of $15 and an annual income interest payment of $200. The net countable income is: $1,200 ($100 X 12) + $780 ($15 X 52) + $200 ($200 X 1) = $2,180.

(c) One-time (nonrecurring) income will be counted for a 12-month period. Such income will be added to the otherwise net countable income. (See example 4 in subpar. g. See also par. 9.23c(1)(c) re unexpected receipt of one-time income.)

e. **Effective Date.** The determination as to whether Social Security or other retirement income is countable from the effective date of the award, or is subject to the end-of-month rule or, in death cases, from the date of entitlement (which may be the first of the month of death) as opposed to the date of actual receipt, will generally be in accordance with the provisions of paragraph 9.03.

(1) However, Social Security or other retirement income based on longevity or dependency for which entitlement accrues on or before the effective date of entitlement to VA benefits will be countable as income from the effective date of the award and not from a later date of receipt, if application for the other benefit had been filed at the time of the claim for VA benefits or the other benefit was previously being paid and is now subject to adjustment.

(2) Likewise, when the source of noncontingent income is other than Social Security or retirement benefits (e.g., life insurance or anticipated interest from what had been a joint account), it will be assumed that entitlement accrued before the date of the VA claim and the income will be countable from the effective date of the award. (See subpar. g, example 4

(3) If application for a benefit (other than for disability) was made prior to the original or reopened claim for VA benefits, but entitlement will not accrue until some future point within the next 12-month period, the income will be countable from the anticipated date of receipt of such income. The end-of-month rule will not be for application in original or reopened awards except as specified in paragraph 9.03.

EXAMPLE: A veteran with a PT date of February 5 reports on the VA application that he/she has filed for union retirement pension and expects to receive $100 monthly beginning August 1 based on his/her 62d birthday. The award will provide for a future award line effective August 1 to include annualized income of $1,200.

f. **Award Notice to Claimant**

(1) **[As of December 1, 1985,] Monthly Rate of [$19] or Greater.** If the monthly rate(s) authorized by an award is [$19] or greater, payments will be released monthly. The award letter generated (with appropriate attachments) will provide sufficient notice to the claimant unless specific circumstances necessitate the use of a dictated letter.

(2) **[As of December 1, 1985,] Monthly Rate of Less Than [$19.]** If the gross monthly rate(s) of pension entitlement (not necessarily the award amount) is less than [$19,] payment (after the initial retroactive payment) will be released quarterly, semiannually or annually. (See subpar. a(3).) [In system generated letters,] the amount of pension payable will be expressed in annual rather than monthly terms. [Where a dictated letter is required, suggested language is as follows:

"Under the Improved Pension program, the maximum annual pension for a person in your circumstances is $_____. This rate is reduced by countable annual income. Your countable annual income has been determined to be $_____. Consequently, you are entitled to pension at the annual rate of _____ effective _____ *date*."

"When the annual rate of pension is less than [$228,] it is paid quarterly, semiannually or annually. In your case, you will receive a check on or about *date* for the amount due for the period *date of entitlement or increase* through *date of last payment*. Thereafter, you will be paid on or about *March 1, June 1, September 1 and/or December 1, as appropriate*."

g. **Examples of Original and Reopened Claims**

EXAMPLE 1. Surviving spouse files original death pension claim on April 14. Based on the veteran's April 3 death, the Social Security benefits will be $450 monthly for the surviving spouse and $137.50 for the minor child who will attain the age of majority March 16 of the year following the calendar year of original entitlement.

Income For The 12-Month Period Following April 1,

	Surviving Spouse	Child
Social Security	$1,800($150/Mo)	$1,650($137.50/Mo)
Lump Sum S.S.	255*	0
Interest	25	0
Rent	105	0
Earnings	0	2,500**
	$2,185	$4,150

$800 burial expenses paid April 12.

This lump-sum nonrecurring income will be countable for the initial 12-month period.

Since the child's earned income is less than the deductible specified by 38 CFR 3.272(j)(1), only the child's Social Security income will be for consideration as countable income.

Countable Income

	Effective April 1 (Payment date May 1)	Effective March 16 of the following year (no payment change)	Effective April 1 of the following year (payment change effective April 1)
Surviving Spouse:	$2,185	$2,185	$1,930
Child:	1,650	0	0
Subtotal:	$3,835	$2,185	$1,930
Less Deductible:	-800	-800	-0
IVAP:	$3,035	$1,385	$1,930

NOTE 1: The income data for entry will be that which supports the future 4-1 award line. Deductible expenses are a factor for the 12-month period following date of entitlement. They will be annotated on the award print but will not be for entry unless they are continuing medical expenses. (See par. 9.22a(2)(a).) Special law code 14 will be for application from May 1 through March 31 of the following year after which it will be zeroed out.

NOTE 2: If the surviving spouse submits a certification of the child's continuing school attendance, it will be necessary to determine if the child's income continued without interruption (in which case the award will be adjusted effective the date of the child's 18th birthday) or if income was interrupted and later resumed (in which event three award lines will be required: one to reestablish the dependent at the prior rate, a second to award increased benefits as of the first of the month following the month in which income decreased, and a third to adjust the IVAP at the end of the month in which the income was resumed).

EXAMPLE 2. Surviving spouse files original claim for death pension on December 2. Veteran died October 30. The only source of income for the year is Social Security, which began on October 1 (first check received November 1 and was increased due to COLA thereafter. Pension entitlement will be determined by applying the annualized income for each period to the appropriate maximum pension rate for each period.

EXAMPLE 3. The death of the veteran on February 5 results in the March payment of $2,000 commercial life insurance to the surviving spouse. The application for death pension, received March 3 indicates this will be the only source of income for the surviving spouse. (See subpar. e(2).) The surviving spouse is entitled to pension based on countable income of $2,000 from February 1 (payment date of March 1 per 38 CFR 3.31) to February 1 of the following year and entitled to pension at the maximum rate thereafter.

NOTE: The complete income data for entry will be that which supports the award line for March 1 of the following year. Special law code 14 will be for application through January 31 of the following year after which it will be zeroed out.

EXAMPLE 4. Same facts as in example 3 above except that the amount of the commercial life insurance is [$5,000,] an amount which exceeds the maximum annual pension rate as of February 1 of the year of death [ ]. The surviving spouse will not qualify for pension for the period February 1 through February 1 of the following year unless there are deductible expenses which would reduce the countable income below the applicable maximum annual pension rate. Without such expenses, the earliest date for entitlement to pension would be February 1 of the year following the year of death. (See par 9.23c(1)(c).) The actual payment date would be March 1 in accordance with 38 CFR 3.31.

EXAMPLE 5. Surviving spouse files original claim for death pension on December 16. Veteran died December 3. The only source of income is Social Security, in an amount that exceeds the maximum annual pension rate and which began on December 1 (first check received January 1). Last expenses paid in January are sufficient to reduce income below the maximum annual pension rate. The rate of entitlement from December 1 (payment date of January 1 per 38 CFR 3.31) will be based on IVAP of annualized Social Security minus last expenses with a termination scheduled for December 1 of the following year as annual income will exceed the maximum annual pension rate on that date.

9.21 INCOME OF DEPENDENTS

a. **General.** The income of a dependent shall be determined under the rules applicable to the income of the claimant.

(1) **Marital Status Under Development.** If award action is taken pending establishment of marital status, the spouse's income must be considered so that benefits awarded do not exceed the amount which [is] payable upon establishment of a dependent spouse. Pending completion of development, payments will be deferred if the countable income exceeds the applicable limitation. If the spouse is established, [ ] award the proper rate of payment and [ ] enter the spouse's income in the income segment.

(2) **Determination of No Valid Marriage.** Develop [ ] to determine the validity of the marriage, including a field examination if necessary. If evidence of a valid marriage cannot be obtained, benefits will be authorized [for] a veteran without a spouse, disregarding any income of the claimed spouse. If prior award action was made in anticipation of establishing a spouse, [ ] adjust benefits to pay the correct single veteran rate based on only the veteran's income.

(3) **Child Out of Custody.** An apportionment of a veteran's Improved Pension to a child out of custody can make the child a dependent of the veteran, if the apportioned amount is sufficiently large enough to be considered a reasonable contribution to the child's support.

b. **Income of Spouse**

(1) If the veteran's spouse is living with the veteran, the spouse is included as a dependent on the veteran's award and income attributable to the spouse is countable income. If the veteran and spouse reside apart but there is not estrangement, the spouse is a dependent for pension purposes (38 CFR 3.60) and the spouse's income will be countable even though the veteran has no access to that income (38 CFR 3.23(d)(4)). The provisions of 38 CFR 3.262(b)(2) regarding a spouse's family requirements do not apply to Improved Pension.

(2) The issue of whether the veteran is contributing to such a spouse's support will become material [if] the [spouse requests] an apportionment. Any moneys received by an estranged spouse from the veteran's Social Security are not contributions from the veteran. However, reasonable contribution may be found when payments are made from the veteran's income in any amount consistent with his or her income.

c. **Income of Child**

(1) The countable income of a child in the custody of a veteran or surviving spouse, or of a child outside of custody to whose support a veteran is reasonably contributing will be a factor in determining the pension rate payable to a veteran or surviving spouse to the extent that such a child's income is reasonably available to or for the veteran or surviving spouse (38 CFR 3.23(d)). (See 38 CFR 3.57(d) for definition of "Child Custody.") [if a veteran's child, not in the veteran's custody, is receiving Social Security benefits based on the veteran's Social Security earnings record, these benefits are not a contribution from the veteran but are income based on the child's own entitlement.]

(2) Except when the child is out of the veteran's custody, it [is] presumed that the child's income, in excess of the exclusions provided by 38 CFR 3.272(j), is available to the veteran or surviving spouse. This presumption may be rebutted by evidence of unavailability. (See app. B, secs. A and B.)

(a) When a child (to whose support a veteran is reasonably contributing) is not in the veteran's custody, it [is] presumed that the income of such a child [is] not [ ] available to the veteran unless there is evidence to the contrary.

(b) It is proper to exclude any income of the child used to pay expenses which are beyond the ordinary and usual family requirements but which the child is under a legal or moral obligation to pay. The obligation must be real and not merely assumed, and the basic element of need to maintain a reasonable standard of living must be present. In this category [are] expenditures for special training for a handicapped child, tuition book and fees for a child attending college. The amount excluded may not exceed the total amount of the child's countable income.

(c) Financial aid to students from outside the family unit is generally classified in one of three categories; scholarships, grants-in-aid or loans. A loan is not considered income under any circumstances. A grant-in-aid or scholarship is not income if it serves only to reduce a basic education cost, such as tuition, books or fees since these fall under the deduction for education expenses. Any amounts of the scholarship or grant-in-aid in excess of this will be considered income, including those amounts received for room and board.

NOTE: Expenditures related to unusual medical expenses [are] applied to the income of the family unit. They [are] not [ ] used to reduce a child's income under this subparagraph.

(3) The child's "basic" net countable income [is] computed by first deducting the 38 CFR 3.272(j) (1) and (2) exclusion from the child's earnings. The adjusted earnings (if any) [are] then [ ] added to the dollar amounts of annual income from all other countable sources.

(a) This sum total [is] further reduced by the amount of the child's income which is unavailable due to the payment of expenses beyond the usual family requirements. (See par. 9.22b.)

(b) The balance, if any, [is] added to the veteran or surviving spouse's "basic" net countable income, and subject further to only deductible expenses as explained in paragraph 9.22.

d. **Child-Custodian Income**

(1) When a child of a deceased veteran has entitlement in his or her own right, the income of a person legally responsible for the child's support is for consideration in determining the amount payable to the child, provided the person legally responsible for the child's support has custody of the child.

(2) No one has custody of a child for purposes of consideration of custodial income absent the legal right to exercise parental control and responsibility for the welfare and care of the child. A person who is legally responsible for the child's support may not have the right to exercise parental control and responsibility for the welfare and care of the child. A parent, for example, might be forced by court order to provide financial support of a child who has been placed by the court in the custody of another adult, one who has full parental control over the child. In such case, the income of neither adult [is] countable as the child's income. It should also be remembered that the legal responsibility envisioned by the rule is that of supporting the child out of the personal assets of the person having legal custody of the child and not out of the child's assets. In other words, the personal income of a guardian of the estate of the child [does] not count as the child's income unless the obligation of the guardian [is] to support the child out of the guardian's personal assets (and the guardian also had legal custody of the child).

(3) A person may not divest oneself of legal custody of a child (and, thus, exclude the custodian's income from the child's total countable income) by merely allowing the child to live with someone else. Legal custody is terminated by death of the custodian or through legal action.

(4) A person who has custody of a child (including a helpless child) will be considered to retain custody after the child has attained age 18. This is only for the purpose of determining entitlement to pension under 38 CFR 3.24 and has no effect on direct payment to a child who has attained the age of majority.

(5) Under 38 CFR 3.57, a stepparent's income may be included in the child's countable income for Improved Pension purposes. The applicable maximum annual rate of pension in these situations, however, remains as that of a surviving spouse plus the child(ren) being considered.

(6) In cases where the legal custodian of a child is someone other than a natural or adoptive parent, the General Counsel has held that the spouse of the legal custodian is not legally responsible for the child's support and the spouse's income is not to be considered in determining the child's entitlement.

(7) When a custodial situation exists, the maximum annual rate of pension for a child still applies. The annual rate payable to or in the child's behalf, less the child's income, cannot exceed this limitation. If more than one child is involved, the maximum rate payable will be increased as the surviving spouse plus the dependent's rate increases. However, the children's income must be totaled to determine the rate payable. Again, the annual rate payable to or in the children's behalf, less their income, cannot exceed the number of children times the child's rate. Any child having income greater than the child alone maximum rate, or excessive net worth, will be excluded from the calculation (and payment), thereby preserving payment for the rest.

9.22 DEDUCTIBLE EXPENSES

a. **General**. In determining net countable income, there are expenses (38 CFR 3.272) which may be deducted from the annualized amount of a *specific* income or from the annualized amount of *otherwise net countable* income (see subpars. b and c).

(1) **Period of Exclusion.** Nonrecurring deductible expenses will be applied against the otherwise net countable income for the 12-month period in which such expenses are paid. For an initial or reopened award, they will be applied against the income for the full 12 months following the effective date of entitlement (see par. 9.20). The date of initial payment or adjustment of an amended award will be determined in accordance with 38 CFR 3.31 but does not affect the future adjustment date which will be 12 months from the entitlement date. For the period in which continuing unusual medical expenses are first claimed, they will be considered from the date on which such expenses were first paid unless they are related to nursing home care. In that event, the expenses will be considered from the effective date of admission to the nursing home or the date of actual payment, whichever is earlier.

(2) **Nonrecurring Expenses.** All expenses, with the exception of the continuing unusual medical expenses described in subparagraph c(1)(b) below, are nonrecurring expenses and are deductible only from the income for the 12-month period in which they were paid. The various types of nonrecurring expenses are described in subparagraphs b and c below.

(a) **Awards.** Whenever a nonrecurring deduction is a factor, the award must have a future reduction or termination award line effective the day following the end of the 12-month period to which the expenses pertained. The future award line will authorize the rate payable based on the annualized countable income *without* the deduction of this new IVAP will be for entry as "Income Amount." The amount of the deductible expense will be annotated in the "Remarks" section.

(b) **Special Law Code 14 or 18.** To permit successful computer audit, special law code 14 or 18, as appropriate, will be entered on the award line which pays the increased rate due to the deductible expenses. This special law code will be zeroed out on the future award line at the end of the 12-month period.

(c) **Income for Entry.** The complete income data for entry will be the annualized countable income which supports the future award line (i.e., without the deductible expenses).

(3) **Recurring Expenses.** Unusual medical expenses will not be excluded prospectively unless there are recurring nursing home expenses or other specific situations in which both income and expense can be reasonably determined. When expenses are excluded prospectively, the award will be subject to any necessary adjustment upon receipt of an amended estimate or income questionnaire report of actual expenditures, under 38 CFR 3.500(a), in accordance with the facts found.

(a) **Initial Allowance of Medical Expenses.** The award will be adjusted effective the date on which the unusual medical expenses were first paid, based on the net countable annualized income subsequent to the deduction of the unusual medical expenses anticipated for the 12-month period. (See subpar. (1) above re nursing home expenses connected with the grant of aid and attendance benefits.) A dictated award letter will be sent advising the claimant that a decrease or termination of recurring expenses would represent a change of income for VA purposes and should be reported immediately to prevent overpayment.

NOTE: Since this will be a "recurring" expense, no special law code or future reduction or termination award line will be required in connection with the deductible expense.

(b) **Decreased Medical Expenses.** The award will be adjusted effective the end of the month in which unusual medical expenses decrease or terminate (i.e., discharge from a nursing home.) If adjustment is required due to prior misreporting of unusual medical expenses, the award will be adjusted in accordance with the facts found.

(c) **Income For Entry.** In addition to the annualized countable income, the total amount of unreimbursed medical expenses will be entered on the 306 screen "Expense" field, not just the amount in excess of 5 percent of the maximum annual pension rate.

b. **Exclusions From Specific Income**

(1) **Exclusions Determining Net Profit–Not For Entry.** Expenses excluded under 38 CFR 3.271(c)(1) to arrive at income (i.e., net profit) from rentals, business or profession will *NOT* be for entry as "Deductible Expenses." The *net* profit amount will be entered as "Earned" or "Other," whichever is appropriate on the 306 screen.

(2) **38 CFR 3.272(j)(1) Exclusion From Child's Earnings.** The gross amount of the child's earned income will be entered in the "Earned" field on the 336 screen (unless such income is not available to the veteran or surviving spouse). Amounts excluded under 38 CFR 3.272(j)(1) to arrive at a child's net countable earnings will be deducted by the computer in the development of the IVAP for the master record income segment.

(3) **Disability Retirement Expenses.** 38 CFR 3.271(g) provides that medical, legal and other paid expenses incurred prior to award of and incident to compensation based on *permanent and total disability or death*, from the Office of Workers' Compensation, Department of Labor, Social Security Administration, Railroad Retirement Board, or pursuant to any workers' compensation or employers' liability statute, or commercial insurance are properly for consideration as "Deductible Expenses."

(a) **Development.** VA Form 21-8416, Request for Information Concerning Medical, Legal or Other Expenses, will be used to develop the amounts the claimant has actually paid and for which he or she has not been (and will not be) reimbursed by insurance or another agency.

NOTE: The amount deducted may not exceed the total (annual) disability retirement or compensation payments to which the expenses are incident.

(b) **One-Time Exclusion.** This exclusion applied but one time; that is, when the disability retirement or other compensation is initially awarded and the legal as well as medical expenses are deductible from the specific disability retirement benefit under 38 CFR 3.271(g). After this *one-time* (nonrecurring) exclusion, any medical exclusions in these cases are governed by 38 CFR 3.272(g) and deductible only when considered "unusual medical expenses." (See subpar. c(1).)

(4) **Child's Postsecondary Education Expenses.** 38 CFR 3.272(j)(2) provides that the expenses of a child who is pursuing a course of postsecondary education or vocational rehabilitation or training are for consideration as a deductible expense from the child's earnings. These expenses will include amounts paid for tuition, fees, books and materials. Generally, these expenses will be allowed after-the-fact, as reported. The amount deducted will not exceed the net amount of the child's earnings subsequent to the 38 CFR 3.272(j)(1) deduction.

c. **Exclusions From Total Income**

(1) **Unusual Medical Expenses.** Unreimbursed medical expenditures which exceed 5 percent of the maximum annual pension rate(s) in effect during the 12-month period in which the unusual medical expenses were paid (including increased pension for family members and entitlement to the supplement for World War I or Mexican border period service, but excluding increased pension because of need for aid and attendance or by reason of being housebound) will be considered unusual (38 CFR 3.272(g)). The term "unusual" does not describe the nature of a medical condition but, rather, the "excessive" amount expended for medical condition but, rather, the "excessive" amount expended for medical purposes (including insurance premiums for health care) as related to a claimant's resources available for sustaining a reasonable mode of life. If the amount of medical expenses claimed warrants on increase in the pension rate, VA Form 21-8416a, Request for Information Concerning Unreimbursed Family Medical Expenses or equivalent itemized statement will be used in determining whether all or part of the claimed expenditures may be considered unusual medical expenses. Listed in addendum A are items that are to be allowed. This is not an all-inclusive list. All unreimbursed expenses which may reasonably be related to medical care are to be allowed.

(a) Generally, unusual medical expenses will be allowed for exclusion after-the-fact, as reported in connection with Eligibility Verification Report processing.

(b) However, if the income is static and the claimant reports substantial unreimbursed expenses actually paid early in the 12-month period, it would be permissible to allow the exclusion during that period. An estimate of *anticipated* medical expenditures of an unusual nature would not be acceptable in the absence of established facts indicating a clear and reasonable expectation that they will occur. In this regard, when the claimant is in need of regular aid and attendance or nursing home treatment, or there is a history of substantial recurring expenditures for a medical condition of the claimant or a family member, the anticipated unusual medical expenses may be prospectively excluded.

NOTE: Allowance of a medical expense exclusion under 38 CFR 3.272(g) for nursing home care expenses will not be granted unless the beneficiary is a patient in a nursing home. This requirement applies equally to cases in which aid and attendance entitlement was established by rating or on the basis of nursing home patient status.

EXAMPLE 1: Effective January 1 and A&A married veteran is receiving pension based on annualized income consisting of Social Security, plus spouse's Social Security. In May the veteran reports unreimbursed medical expenses paid to date. The veteran is entitled to an increase based on allowable expenses from January 1 (or the later effective date of an original or reopened award) and, unless the expenses are continuing, will provide for a future January 1 adjustment. The actual payment date will be in accordance with 38 CFR 3.31.

NOTE 1: The total medical expenses will be annotated on the award print unless they are continuing.

NOTE 2: The 5 percent deductible will change December 1 due to COLA. Since the medical expenses are not in the master record, automatic adjustment may not be possible. If necessary, the SL 18 will cause referral to the regional office.

EXAMPLE 2: A surviving spouse with three children is receiving pension from March 1. In May the surviving spouse reports nonrecurring unreimbursed medical expenses. The oldest child will reach age 18 on February 3 within the 12-month period to which the unusual medical expenses will apply. Therefore, the 5 percent deductible will have to be recomputed when the new basic rate becomes effective. A COLA will also require recomputation of the 5 percent deductible expense.

EXAMPLE 3: A single veteran is receiving pension from February 1. In April, the veteran reports being married on April 4. The spouse has countable income which requires recomputation of income for VA purposes. The veteran also reports (nonrecurring) unreimbursed medical expenses paid subsequent to February 1. Recomputation of allowable medical expenses is required on February 1 and May 1 based on the maximum annual pension rate applicable for each date. Special law code 18 will be required from February 1 to February 1.

EXAMPLE 4: A single veteran's claim of January 19 was denied due to excessive income. In September, the veteran reports paying hospitalization insurance premiums beginning August 3. A request is made for reconsideration of this claim based on continuing medical expenses. Effective August 3, the unusual medical expenses reduces annual countable income to an amount

within the maximum annual pension rate. Pension is payable from September 1. A cost-of-living increase effective December 1 increased the maximum annual pension rate, the veteran's income, and the 5 percent deductible requiring recomputation.

EXAMPLE 5: A surviving spouse with three children is receiving pension from March 1. The surviving spouse reports becoming a nursing home patient on May 2, with the first payment made May 5. The children remain in the surviving spouse's legal custody and entitlement to aid and attendance benefits is effective May 2. The deductible will be computed as of May 2 and recomputed effective the date each child reaches age 18, based upon the applicable maximum annual pension rate. The amended award (TR 13C) will include an income segment reflecting continuing medical expenses effective June 1.

NOTE: Generally, continuing unusual medical expenses will become a factor from the first date on which the continuing expenses were paid, rather than the first of the year (or date of award) in which paid as for nonrecurring unusual medical expenses (see examples 3 and 4 above). However, when the continuing expenses are the result of entry into nursing home care, the expenses will be for consideration from the date of admission to the nursing home, if this is more advantageous to the claimant. When the EVR is processed, the income and expenses will be recomputed based on actual income and expenses.

EXAMPLE 6: Same facts as in Example 5 except that surviving spouse also reports payment of *nonrecurring* medical expenses for the period March 1— May 2. Such expenses apply to the year in which paid (i.e., January 1 or later effective date of original or reopened award) and are creditable for a 12-month period. The complete income date for entry will be that which supports the future March 1 award line. The nonrecurring medical expenses and the recurring medical expenses from May 2 will be reflected in the Remarks section of the award. The continuing expense will be input. Special law code 18 will be for application from April 1 (payment date per 38 CFR 3.31) through February of the following year after which it will be zeroed out.

(2) **Last Expenses**

(a) **General.** The amount deductible from the otherwise net countable income, which was paid for the final expenses of the last illness and burial, will be considered as a nonrecurring deductible expense when paid by:

1. Surviving spouse or child for the last expenses (including just debts) of the deceased veteran (38 CFR 3.272(h)(1)) or the burial and last expense of a deceased child (38 CFR 3.272(h)(2)).

2. Veteran, surviving spouse of child for the last expenses of the veteran's deceased spouse or child (38 CFR 3.272(h)(2)).

(b) **Year of Exclusion.** The claimant is entitled to the benefit of the deduction of last illness and/or burial expenses for 12-calendar months. Generally, the award adjustment will be effective February 1 of the year in which the expenses are paid. If, however, the expenses pertain to an initial year of entitlement and the effective date of the original or reopened award is later than February 1, the deduction will apply for the 12-month period following the date of entitlement. (See pars. 9.20g. and 9.24b(5).)

NOTE: If the death claim is filed more than 45 days after the date of death, any income (including insurance) received prior to date of claim is not countable as income [and any expenses (including last illness and/or burial) paid prior to date of claim are not deductible from income.]

(c) **VA Burial Benefits Paid to Claimant.** If the VA burial and/or plot allowance benefits are paid to the claimant as the person whose personal funds were used to pay for the veteran's funeral, only those amounts of final expenses which are in excess of the VA allowance may be claimed as deductible expenses. For example, a surviving spouse paid $1,500 for the veteran's burial and subsequently received $450 in VA burial benefits as reimbursement. The amount claimed as expenses of the burial may not exceed $1,050. Since the VA burial benefits are in the nature of a reimbursement, they will not be considered countable income.

(3) **Educational Expenses of Veteran or Surviving Spouse.** 38 CFR 3.272(i) provides that the expenses of a veteran or surviving spouse who is pursuing a course of education or vocational rehabilitation or who is training in order to pursue such a course of education or rehabilitation, are properly for consideration as a deductible expense. VA Form 21-4138, Statement in Support of Claim, will be used to develop the amounts the claimant has actually paid during the calendar year and for which he or she has not been (and will not be) reimbursed.

(a) **Reportable Expenses.** Reportable expenses will include amounts paid for tuition, fees, books and materials.

(b) **Transportation.** For a veteran or surviving spouse in need of regular aid and attendance, unreimbursed amounts paid for unusual transportation expenses in connection with the pursuit of a course of education or vocational rehabilitation or training will be reportable expenses to the extent that such amounts exceed the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation, if reasonably available.

(c) **Not Projectable.** Generally, educational and transportation expenses will be allowed for exclusion after-the-fact, as reported.

(4) VA Benefits

(a) The intent behind passage of Public Law 95-588, Improved Pension, was that generally, each beneficiary would receive only one pension benefit based on his or her own entitlement (38 CFR 3.700(a)(4)). There is no prohibition though, against a beneficiary concurrently receiving both Improved Pension and DIC provided eligibility criteria are met. Since 38 U.S.C. 503(a)(2) excludes only pension, the DIC payments will be counted as income for Improved Pension purposes.

(b) If a dependent is receiving a VA benefit other than pension based on his or her entitlement, the amount can be counted toward the veteran or surviving spouse's income if the dependent's income is considered available to the veteran or surviving spouse.

(c) The receipt of more than one death pension by a surviving spouse remains prohibited. There is no prohibition against a child receiving two Improved Pension payments or one Improved Pension payment and payment of another VA benefit, both based on entitlement as a child, unless the entitlement arises from parents in the same parental line, e.g., two fathers or mothers. However, any VA benefit other than pension is countable income for Improved Pension purposes.

d. **Christian Science Practitioners.** Treatments by Christian Science practitioners do not constitute medical care (Administrator's Decision No. 701) and expenses for such services are not to be considered medical expenses for the purpose of the unusual medical expense deduction under 38 CFR 3.272(g).

e. **Veterans in State Homes, 38 U.S.C. 641.** Many States operate homes for veterans designated as Veterans' Homes, Soldiers Homes, and Soldiers' and Sailors' Homes, etc., furnishing domiciliary care and in some instances nursing home and hospital care. Generally the veterans are charged an amount based upon their income, in addition to that payable under 38 U.S.C. 641, for the care required. Where satisfactory evidence is received that a veteran in a State home is receiving hospital or nursing home care in a patient status, his or her payments for such care are medical expenses for inclusion in determining unusual medical expenses under 38 CFR 3.272(g).

9.23 ADJUSTMENTS BASED ON CHANGES IN INCOME OR NET WORTH

Determinations as to the proper rate of payment in continuing awards will involve two issues. The first is the establishment of the appropriate maximum annual pension rate or rates, as dictated by the type of payee (veteran, surviving spouse or child), dependency status and entitlement to aid and attendance, housebound benefits or Mexican border World War I service supplement. These rates will be found in 38 CFR 3.23. The second issue is the computation of the countable income(s) during the period involved. Any unexpected increase in or incurrence of income will demand a recalculation of countable income, based on a 12-month projection of the increased income plus the addition of all other countable income for that period. Any reduction or termination due to the increase income will be effected the 1st of the month following that in which the increase was received (end-of-month rule). One-time (nonrecurring) income will be countable for a full 12-month period following the date of award adjustment or termination (see subpar. c(1)(c)) and special award procedures will be required to insure that automatic adjustments (COLA or EVR) do not disturb such income.

a. **Requests for Additional Evidence.** A notice of receipt of income should be sufficiently informative to show the source, rate, and date of receipt.

(1) **Award Action**. Adjustments may be deferred or interim adjustments made pending development, when there is a lack of definitive information or the element of reasonable doubt exists (par. 9.03). Payments will not be suspended pending development, unless the report shows a definite increase in received and or expected income which will require current or end-of-month termination of the payments being made.

(2) **Development**. When evidence is required to determine entitlement, the payee will be requested to furnish the necessary data on VA Form 21-4138, Statement in Support of Claim, and or other appropriate forms as provided in paragraph 9.02.

(a) If it appears on overpayment situation may exist, the request will specify that current payments may be in excess of the allowable amount and that since overpayment recovery may be necessary, it is to the claimant's advantage to reply promptly. The notice will further state that if the clarifying evidence is not furnished within 60 days, payments will be discontinued or reduced without further notice. Appropriate end product control will be established, in the pending issue file.

(b) If the clarifying evidence required relates to income changes coming within the end-of-month rule (subpar. c below), the claimant will be advised that if the evidence is not received, payments will be reduced or discontinued effective the first of the calendar month following receipt of the increased income.

b. **Award or Increase**. When payments have been deferred or paid at a lower rate (par. 9.03) or disallowed, terminated or reduced because of income or excessive net worth, payments may be awarded, resumed or increased in accordance with the following. (See also par. 9.24.)

(1) **Retroactive Adjustment**. If the prior action was based on anticipated income, an award may be made in accordance with the facts found, provided the evidence requiring reconsideration is received within the same or the succeeding calendar year 38 CFR 3.660(b)(1)). (See par. 924d, example 5.)

(2) **Current or Future Adjustment**. If the prior action was proper, based on actual income, and evidence establishing entitlement or increase in rate is received within the following calendar year, entitlement to an award or increased award will be as of the 1st of that calendar year or later date of entitlement (38 CFR 3.660(b)(2)). Annualization of income for loss of income will be from the day after the change, e.g., day after last check or reduced check.

(3) **Determination of Effective Date**. The effective date for commencement of period of payment as opposed to date of entitlement will be determined by 38 CFR 3.31.

(4) **Net Worth Reconsidered**. If reconsideration is based on evidence of reduction in net worth or change of circumstances, the effective date of award or resumption will be determined in accordance with the facts found. If the claim has been finally disallowed or terminated, however, payment may not be awarded or resumed prior to the date of receipt of a new claim (38 CFR 3.660(d)).

NOTE: If a claim for the dependency of a child is reopened on the basis of a reduction in net worth or change of circumstances of the child, it must also be determined that the child met the 38 CFR 3.57 definition of "child" throughout the intervening period.

c. **Reductions or Discontinuances**

(1) **Income End-of-Month Rule**. If, after the entry of an award at a rate based on anticipated income, reduction or termination is required because there is an increase in income, the effective date of reduction or termination will be the 1st day of the month following that in which the increase occurred (38 CFR 3.660(a)(2)).

(a) It cannot be stressed too strongly that the end-of-month rule is applied only for determination of the "effective date" for reduction or termination. The increased income *will* be used in determining the rate payable as of the 1st of the month following its receipt.

NOTE: If subsequent to the application of the end-of-month rule, the claimant establishes eligibility for a new dependent or benefit (A&A/HB) from a date prior to end-of month reduction or termination, the increase will be awarded. The effective date established by the end-of-month rule will be continued (i.e., no attempt will be made to adjust the rate effective the date of actual receipt of the increased income).

EXAMPLE: A single veteran in receipt of pension is terminated May 1 due to receipt of nonrecurring income on April 13, causing countable income to exceed the maximum annual pension rate. In May, it is determined that the veteran is entitled to aid and attendance benefits from February 17. The reopened award will pay from March 1 and will be adjusted on May 1 if the veteran's countable income from May 1 is within the maximum annual pension rate for a veteran entitled to aid and attendance. If the veteran's countable income from May 1 is in excess of the maximum annual pension rate for a veteran entitled to aid and attendance, the award will be terminated effective that date.

(b) When the end-of-month rule applies, the award adjustment, if done prospectively, will provide a continuation of payment at the rate properly authorized, based on the previously anticipated income, through the end of the month. Special law code 18 must be used when the "protected rate," thereby continued, is the current rate: i.e., for acceptable computer audit and consitency check with the complete income information entered. (See par. 9.24a.)

(c) One-time *nonrecurring* income will be considered countable income for a full 12-month period, beginning with the 1st of the month following that in which the income was received.

1. If the increased income is such that a termination is in order, the claimant may reestablish entitlement from the date of discontinuance only by submitting evidence with establishes deductible expenses and/or reduced income that brings the net countable income, *including the one-time income*, within the maximum annual pension rate. Otherwise, the earliest possible date of entitlement will be the day following the elapse of the 12-month period. For example, a single veteran is receiving pension based on $0 countable income. He reports receipt on August 19 of a lump-sum payment of $5,000 from a damage suit. The veteran's award will be terminated effective September 1. His countable income from September 1 entry through August 31 will be $5,000 unless he reports deductible expenses.

2. If the increased income results in a reduction, a future award line will be established to restore the claimant to basic entitlement at the end of the 12-month reduction period. The income for entry will support the future award line (i.e., the one-time payment will not be entered). A special law code 18 will be required to permit computer audit of the reduced rate period. The amount of the one-time payment will be annotated the award print.

NOTE: This procedure will insure that automatic COLA and EVR processing does not disturb the 12-month reduction period.

(2) **Net Worth–End-of-Year Rule**. If, after entry of an award, a termination is required because there is an increase in net worth, the effective date of termination will be the 1st day of the year following that in which the increase occurred.

(3) **Action on Notice of Receipt of Additional Income**

(a) **Adjustment of Past Payments–End-of-Month Rule**. If, after an award is entered at the proper rate based upon anticipated income, there is a report of receipt of increased income (which could not reasonably have been anticipated), the end-of-month rule will be for application.

1. Termination or reduction will be effected as of the 1st of the month following the month in which the increase in income occurs. (38 CFR 3.660(a)(2))

2. However, if the increase in income should have been reasonably anticipated, at the time the claim was filed or reopened the award will be retroactively terminated or reduced, under 38 CFR 3.500(b)(1). (But see par. 9.20c(2) re original and reopened awards.)

(b) **Adjustment for Expected Income**. Following the basic rule that prospective entitlement and rate will be determined on the payee's estimated annualized income, upon receipt of a report of anticipated increased income, the award will be terminated

or reduced to the rate payable based on the new income, effective the 1st of the month following receipt of the increase (see par. 9.24a). (But see par. 9.20e(2) re original and reopened awards.)

d. **Waiver of Retirement or Other Income.** 38 CFR 3.262(h) regarding waiver of retirement income does not apply to Improved Pension. All income not specifically excluded by 38 CFR 3.272 will be counted as income, including any waived amounts.

e. **Unreliable Reporting.** If it is determined that previous reporting has been unreliable, so as to cast doubt on the current estimate, payment for the forthcoming (expected) 12-month period will be authorized at the lowest appropriate rate or withheld pending timely receipt of a report of actual income received. (38 CFR 3.271(f))

(1) The beneficiary will be advised of the action taken and of the right of appeal.

(2) He or she should also be informed that retroactive adjustments may be made if it is established that the income for the period in question did not or will not exceed the applicable limitation upon which the action was based or would warrant a higher rate, provided such evidence is received at any time within the same or next succeeding year. (38 CFR 3.660(b))

f. **Veteran Entitled to Compensation.** If the veteran is also entitled to compensation and payments of pension are to be terminated or reduced to a lesser rate, the award will be amended to authorize payment of compensation for any period during which it is the greater benefit without need for an election (see par. 29.04a).

g. **Increased Net Worth–Termination.** See paragraph 9.27.

h. **Award Notice to Claimant.** See paragraph 9.20f.

i. **Loss of Social Security Entitlement.** When notice of loss of Social Security entitlement is received and the veteran is under age 65, any necessary evidence will be obtained to ascertain whether the veteran remains totally disabled for pension purposes.

j. **Recurring Income Received for a Specified Period.** If a claimant reports recurring income for only a specified period (e.g., short term employment, worker's compensation or disability insurance), that income will be considered as nonrecurring and added to any other income for the annualization period during which it was received. In an original or reopened award this will be the 12-month period from the inception of the award. In a running award this will be for the 12-month period beginning the first of the month following receipt of the initial payment.

9.24 ADJUSTMENT PROCEDURES

The instructions in this paragraph are for the preparation and processing of amended awards required to effectuate adjustments required solely due to changes in income. (See par. 9.25 when changes in marital or dependency status are also involved.)

a. **Prospective Adjustments–Special Law Code 18.** When, in the application of the end-of-month rule, payments are to be continued for the balance of the current month(s) at the current rate (based on income as previously estimated) because the now reported actual or revised estimate of income requires reduction or termination as of the 1st of the month following receipt, special law code 18 will be used for the "protected" rate period. Use of this code will direct computer audit comparison of "Income for VA Purposes" with the income amount in the future award segment, at the expiration of the protected rate period, and acceptance of the interim rate for the previously estimated income amount during the protected period. (See ch. 15.)

(1) The first award line on the amended award should be effective as of the 1st of the current month, using reason code 96 with special law code 18, and the income amount previously estimated (upon which the protected rate was based).

NOTE: Any other applicable special law code will be entered as the miscellaneous code (see ch. 15).

(2) Any other previously scheduled award line(s) for the balance of the period between the 1st of the current month and the date of reduction or termination will be reinserted with existing reason code(s) and the protected rate.

(3) The award line, effective the 1st of the month at which the protection is discontinued, will show reason code 11 and special law code "00" (or other applicable code). The income amount entered will be the new net (annualized) countable income based on the revised estimate, which will agree with (and be supported by) the complete income data entered with this amended award.

NOTE 1: If there already is a scheduled termination established in the master record for a date prior to the end of the month (e.g., last child reaches age 18), the revised income data are still required for entry along with the special law code 18. However, the terminating award line would be reentered with special law code "00" but retaining the existing reason code (e.g., 24, Child Reaches 18).

NOTE 2: If there is continued entitlement, computer processing at the updating of this future will automatically replace the "0" in the special law code field with any code being carried in the miscellaneous code field. (See ch. 15.)

b. **Retroactive and Current Adjustments**

(1) The need for accompanying complete income information to support the amended award will be determined by whether the change in income will require a change in the existing complete income segment to support the continuing rate, or such change in income was solely for a prior period and, therefore, only historical. That is, complete income information will not be required input for purely historical purposes. The "actual" income code (the income amount entry on the award line for a prior period) supports the prior payment.

(2) For these amended awards, the income amount entered on an award line retroactively reducing or increasing the rate payable, will be the revised countable income for the past period. On any intervening award line, if one is required to authorize another rate, enter the income amount on which such rate is based.

(3) When adjusting awards based on estimated income to reflect actual income, the recomputed rate is to be compared to the pension rate for the previous year to determine if the provisions of 38 CFR 3.31 apply. The comparison is *not* between the previously estimated rate and the recomputed rate based on actual income.

EXAMPLE: Veteran received $400 per month from January 1, 1983 through December 31, 1983 based on actual income reported on the 1983/1984 EVR and $300 per month based on estimated income for 1984. The 1984/1985 EVR shows medical expenses sufficient to entitle the veteran to $350 per month from January 1, 1984. Since this rate is less than the $400 paid during 1983, section 3.31 does not apply and the $350 rate is payable from January 1, 1984. The fact that the previous rate based on estimated income is less than the recomputed rate does not prevent the veteran from receiving the recomputed rate from January 1, 1984.

(4) Section 3.31 is a factor only if the recomputed rate exceeds the rate paid during the previous year. In the example above, if the veteran had been entitled to $450 from January 1, 1984 based on actual income, he would receive the 1983 rate of $400 for January 1984 and $450 from February 1.

(5) Title 38, Code of Federal Regulations, section 3.31 may become a factor if a surviving spouse previously paid the veteran's rate for the month of death (38 CFR 3.31(c)(1)) later reports supplemental income and/or deductible expense information. If the recomputed pension rate exceeds the rate previously paid for the month of death, a comparison of the total pension payments paid for the initial 12-month period and the total recomputed pension rate payable for the same period will be made. (The recomputed pension rate would be payable for 11 months as 38 CFR 3.31 now applies for the month of the veteran's death.)

(a) If the total already awarded exceeds the recomputed total, no award action will be taken and the spouse will be fully informed.

(b) If the recomputed total exceeds the total already awarded, the award will be amended to show no payment for the month of death and the recomputed pension rate from the first of the following month.

c. **Automatic Cost-of-Living Adjustments.** Whenever Social Security benefits are increased as a result of a determination under section 215(i) of the Social Security Act (i.e., cost-of-living adjustment), the maximum annual pension rates will also be increased by a like percentage and at the same time. Since cost-of-living Social Security increases are usually effective December 1, pension rates will also increase on that day. Whenever possible, adjustment of running awards will be made automatically by the computer. Instructions for regional office actions and a revised 38 CFR 3.23 will be furnished in connection with each adjustment.

(1) The increased monthly Social Security rate will be annualized and added to all other sources of income (see par. 9.20d(2)). This new net countable income will be deducted from the increased maximum annual pension rate to determine entitlement from December 1.

(2) When Social Security income is not a factor, the existing December 1 net countable income will be used to determine the increased entitlement.

(3) The provisions of 38 CFR 3.31 do not apply to adjustments resulting from COLA.

d. **Examples**

EXAMPLE 1: Veteran is receiving pension based on net countable income of $100 interest. In September, he or she reports anticipated November receipt of $225.20 monthly old age Social Security check. (par. 9.23c(3)(b)). Annualized countable income effective COLA will be $2,802 ($100 + ($225.20 × 12)). Amended award (TR 13C) processed in September or October with complete income information to support the future COLA reduction must provide a current award line, even though the current rate remains unchanged, in order to enter special law code 18.

EXAMPLE 2: Same facts as in Example 1 above, *except that* veteran notified us after COLA. Since the effective date of the reduction is now past, special law code 18 will not be required.

EXAMPLE 3: Surviving spouse with two children is receiving pension from June 1 based on countable income of $2,100 ($175 monthly Social Security for spouse, no income for the children). Due to COLA this was adjusted effective December 1. Subsequently, the claimant reports that on August 11, he or she received a one-time, nonrecurring payment of $1,000 from the settlement of a damage claim. The end-of-month rule applies and the amended award (TR 13C) will show adjustment based on receipt of the nonrecurring income effective September 1. The award will show adjustment to remove the nonrecurring income effective September 1 of the following year with an intervening rate change on December 1, based on the cost-of-living increase. Special law code 18 will be for application from December 1 through August 31 of the following year after which it will be zeroed out.

NOTE: The award print will be annotated "$1,000 lump sum payment received ____(date)____."

EXAMPLE 4: Single veteran has been paid pension based on the following incomes: effective January 1 based on $0 countable income; effective March 1 based on February 1 receipt of Social Security of $225.20 monthly; effective March 21 based on award of aid and attendance benefits; and effective December 1 based on COLA (new Social Security of $247.50 monthly). During December, veteran reports continuing medical expenses of $380 which had their inception on March 21. The 5 percent computation for the medical expenses will be based on the March 21 maximum annual pension rate and on the December 1 maximum annual basic pension rate. The computed amounts will be deducted from the countable incomes applicable during the March 21 - November 30 and December 1 - subsequent periods.

NOTE 1: This example assumes aid and attendance benefits were based on entrance into a nursing home and therefore the continuing medical expenses are deductible from that date (see par. 9.22c(1)(c), example 6).

NOTE 2: The complete income data for entry will be that which supports the current rate, and will include the continuing expense. If the expense had been nonrecurring, the award would have included special law code 18 and a future January 1 award line, supported by income data without the unusual medical expense.

EXAMPLE 5: Surviving spouse is receiving pension based on earnings of $2,100 ($175 per month). In May, he or she reports that employment ceased April 15 and the last paycheck was received May 5. From that date countable income will be $0. The award will be adjusted effective June 1 to pay the maximum rate.

EXAMPLE 6: Single veteran is receiving pension based on $0 countable income. In April, he or she reports the April 19 receipt of a $1,000 disability payment check. The check represents retroactive payments for the period November 1 of the previous year through February 28 of the current year and includes the regular monthly payment of $200 for March. Beginning May 1, there will be a regular monthly check for $200. Veteran is entitled to end-of-month rule for one payment. Countable income effective May 1 will be $3,200 ($800 retro amount plus $200 X 12). The amended award (TR 13C) will pay pension based on $3,200 countable income effective May 1 with an adjustment to $2,400 countable income effective May 1 of the following year.

NOTE: The award print will be annotated "1,000 lump-sum payment received __(date)__." The income data for entry will support the future May 1 award line.

e. **Termination.** Retroactive termination because of excessive income or termination (retroactive or prospective) because of net worth may be effected by [amended award or] stop award actions using reason code 11 (Excess Income) or code 12 (Excessive Net Worth). However, if transaction 09 or 41 [(manila only)] is used, a dictated or form letter will be required to provide notice of the action taken, since a computer-generated letter is not provided for these transactions.

(1) **Excess Income.** Retroactive termination [requires] entry of [ ] income data [but does require a] special law code 18. Prospective terminations will be effected by amended award action [(13C)], or, if a part of EVR processing, by use of [amended award action (13Q)].

(2) **Excessive Net Worth.** Terminations for this reason will [ ] be effected by [amended] award action. An amended award [is] required [ ] when there is an intervening adjustment (e.g., dependency change) to be made prior to the effective date of termination. (See also par. 9.27 re net worth determinations.)

9.25 CHANGES IN MARITAL OR DEPENDENCY STATUS

a. **General.** When, pursuant to the instructions in this paragraph (or the provisions of par. 24.16) award adjustment is required due to a change in marital or dependency status (from "no dependents" to "with a dependent" or vice versa):

(1) Entitlement for each period of different dependency status will be determined on the basis of the applicable maximum annual pension rate and the annualized net countable income. When a dependent is gained, the income received by the spouse or child subsequent to the date of entitlement will be added to the claimant's income.

(2) If there is an indication that a change in the income of the veteran or surviving spouse may have also occurred, any necessary development should be undertaken.

b. **[Improved Pension and Reallocation of Social Security.** If Social Security recipients are receiving the maximum family benefit, there is generally a reallocation of benefits when a member of the family loses entitlement. Develop and/or control Improved Pension cases in which Social Security is received by three or more family members, at least one of whom is a child under 18, at the time of award preparation as follows:

(1) Notify the veteran with children in custody, and/or custodian of children out-of-custody, to inform the VA of any change in the reallocation of Social Security benefits due to a child attaining 18.

(2) Establish a future diary control using reason code 30 on all awards for children under 18, except for an award prepared solely for the eldest or only child under 18. Establish the control for 2 months prior to the month in which the eldest child turns 18. Annotate the award(s) with the reason for control as follows: "Diaried for possible reallocation of Social Security benefits when _____(name)_____ turns 18."

(3) When the control matures, notify the veteran with children in custody, and/or custodian of the remaining children under 18 to furnish the new account of Social Security payable within 60 days, and advise the payee that failure to do so may result in suspension of benefits.

NOTE: Take action in accordance with subparagraph (3) above in conjunction with award action when an award is prepared and there is a child turning 18 within 2 months.

(4) If a change in Social Security is reported, take action to either adjust or terminate the running award(s) as appropriate.

c.] **Loss of Dependent—Lower Maximum Annual Pension Rate.** The instruction in paragraph 24.16 will be fully applicable for determinations as to effective date for reduction or termination and adjustment of pension awards. For example, school child (with no countable income) scheduled to terminate school attendance on July 1, marries October 9. The award will be adjusted effective November 1.

(1) **Increased Income Involved.** The adjustment for the dependency loss will be effective the first of the following month (or earlier scheduled date of termination for child's 18th birthday or school attendance) as provided in 38 CFR 3.660(a)(2) and in paragraph 24.16. The end-of-month rule will govern as to the effective date of reduction or termination due to the increase in countable income.

EXAMPLE 1: Surviving spouse with a child is receiving pension based on no countable income for child and $800 interest for surviving spouse. Child dies April 21 and surviving spouse reports receipt of $1,000 commercial life insurance on May 3. Amended award (TR 13C) will reduce pension based on loss of the dependent effective May 1 with a further adjustment based on countable income of $1,800 from June 1 through June 1 of the following year.

EXAMPLE 2: Married veteran with $1,300 net rental income is receiving pension. On March 3, his spouse, who had no income, died. The veteran reports the receipt of additional recurring income of $175 monthly starting April 1. The new annualized net countable income will be entered and the amended award (TR 13C) will show reduction based on loss of the dependent effective April 1 with a further adjustment based on countable income of $3,400 effective May 1.

(2) **Decrease in Income Involved.** When there has been a decrease in countable income for the month of loss, a claimant will be awarded the rate based on actual income and dependency status as of the first of the following month.

EXAMPLE. Married veteran is receiving pension based on a maximum annual pension rate for a veteran plus spouse and three children and net countable income of $2,400 for the veteran and $,1000 for the spouse and children. On April 12 the veteran notifies us that he or she and spouse legally separated January 23. The children are living with the spouse and the veteran is contributing to the support of all four. The children's income is not available to the veteran but the spouse's $250 income must be counted (38 CFR 3.23(d)(4) and par. 9.21b.) Therefore, from January 24 the veteran's income for VA purposes is $2,650.

NOTE: If the veteran was not contributing reasonable support to the estranged spouse, the spouse could not be considered dependent, and the veteran's maximum annual pension rate would be that of a veteran with three children (38 CFR 3.23(d)(1) and (4)).

[d.] **Dependent Added—Higher Maximum Annual Pension Rate.** The dependent's income will be counted as income of the person entitled for the 12-month period following the date the dependent is established (38 CFR 3.401(b) or, for a posthumous child, 38 CFR 3.403(c)).

(1) **Increased Rate Payable.** The actual payment date will be in accordance with 38 CFR 3.31.

(2) **Decreased Rate Payable.** If the dependent's income is such that the claimant will be entitled to a rate of pension smaller than what would be payable without the dependent, the award will be adjusted to show the reduced rate and the new dependency status effective the first of the month following the month in which the dependency change occurred. (See par. 9.22c(1)(b), example 3.)

EXAMPLE: Notice (and proof, when required) received May 20 that single veteran, receiving pension based on countable income of $1,000, acquired a spouse on April 19. The spouse expects earnings of $1,500 in the 12 months subsequent to the marriage. Amended award (TR 13C) will show addition of spouse and reduction of pension payable effective May 1. Accompanying entry of complete income information will be required to show veteran and spouse's annualized income.

9.26 SURVIVING SPOUSE OR CHILD'S AWARD TERMINATED—OTHER BENEFICIARIES

A generated letter will not be produced when the pension award to a surviving spouse or child is terminated by transaction 09 or 41 [(manila only)]. A dictated letter is required. (See par. 13.07e.2. re combined Social Security check to surviving spouse and children.)

a. **Surviving Spouse Award Terminated.** In accordance with the "family unit" concept of Improved Pension, when the surviving spouse's entitlement ceases because of excess income or net worth, the entitlement of all children in his/her custody also ceases. Payments for the children may be resumed only if the surviving spouse reestablishes eligibility, remarries or the child is removed from the surviving spouse's legal custody. The termination of an award to a surviving spouse will have no impact on any award being made to children out of custody.

b. **Remarriage.** Upon remarriage of a surviving spouse, payments will be terminated under the procedures in paragraph 39.01 and development undertaken to determine if the children in custody may be entitled in their own right. As the legal custodians, the income and net worth of the surviving spouse and the step-parent will be a factor in the children's entitlement. Upon receipt of the requested evidence within 1 year of request, action will be taken, if otherwise in order, to authorize the rate payable to each child (no surviving spouse entitled) from the date of discontinuance of payments to the surviving spouse.

c. **Child's Award Terminated.** When there is no surviving spouse or when a child is out of the surviving spouse's legal custody, the child's entitlement is completely independent of any benefits paid to any other beneficiary. The adjustment or termination

of such an award will have no impact on the other claimants, unless such other claimants are receiving benefits under Section 306 or Old Law pension. (See ch. 39.)

9.27 NET WORTH DETERMINATIONS

a. **General.** When the issue is raised that net worth may be excessive and a bar to pension, further development will be undertaken as necessary. VA Forms 21-527, 21-4100, 21-6897 and 21-8049 are available for this purpose.

(1) There is no prescribed amount limitation as it is a question of fact for resolution after consideration of the facts and circumstances in the individual case.

(2) If the financial resources of a veteran and spouse or a surviving spouse are sufficient to meet the needs of the family unit, the intent of the law is that no payments may be authorized. (38 CFR 3.274(a) and (c))

(3) If the financial resources of a child of a veteran or surviving spouse are sufficient to meet the child's needs, the child may not be considered dependent. (38 CFR 3.274(b) and (d).) If the resources of a child alone (no surviving spouse) or out of the custody of a surviving spouse are sufficient to meet the needs of the child, the intent of the law is that no payments may be authorized. (38 CFR 3.274(e))

(4) The criteria provided in 38 CFR 3.275 will be applied, taking into consideration the type and amount of property involved, the age and life expectancy of the claimant or dependent, the number and state of health of persons dependent upon the claimant for support, and amounts available as income.

NOTE: Child "life expectancy" is 23.

b. **Disallowances or Terminations.** When pension is to be denied or discontinued because of excessive net worth, the adjudicator will prepare a formal determination in accordance with paragraph 14.34 for approval by an authorizer.

(1) VA Form 21-5427, Corpus of Estate Determination, will be used for this purpose, furnishing a full statement of facts concerning the size and composition of the estate and the conclusion reached.

(2) The approval on this form will constitute the basis for disallowance or termination under reason code 12, Excessive Net Worth, or reduction under the appropriate reason code for the loss of a dependent child.

(3) Pursuant to the end-of-year rule under 38 CFR 3.660(a), awards will be terminated or reduced effective January 1 of the year following that in which the net worth is determined to have become excessive.

[c. **Awards.** The adjudicator or senior adjudicator shall prepare an administrative decision in accordance with paragraph 14.34 for the approval of an authorizer when the determination is favorable and the estate is $35,000 or more. VA Form 21-5427 will be used. Where the determination is favorable and the estate is less than $35,000 preparation of VA Form 21-5427 is not required. (See par. 15.21a.)]

9.28 SALE OR TRANSFER OF REAL OR PERSONAL PROPERTY

For Improved Pension, profit realized from the disposition of real or personal property, other than in the course of business, is excluded from income (38 U.S.C. 503a(6)). However, when payments are made in installments, amounts received in excess of the sales price will be counted as income. (38 CFR 3.272(e))

a. **General.** The capital gain from the sale of real or personal property is considered an enrichment of the claimant's basic holdings, and is not counted as income unless the claimant engages in repeated or bulk transactions in the nature of a commercial enterprise; e.g., trading in stocks or real estate. Single or occasional instances of purchasing property and resale for profit will not be considered operation of a business (income from which would be counted under 38 CFR [3.271(c).]

(1) If not considered operation of a business, eligibility will not be affected except when the total amount received causes a material increase in net worth, or because of conversion to liquid assets, it is reasonable that some part be used for normal living expenses; or, in any case, by reason of reinvestment there has been a material increase in the monthly or annual income.

(2) It is not material whether the proceeds are used to purchase other property, reinvest in another type of security or for subsistence purposes. Neither the date, manner nor value at time of acquisition is a factor since the consideration for the sale, whether cash, securities, a lien or other property is viewed only as a change in the character of the claimant's assets. Even though there is a cash settlement, the sole question is the extent to which the beneficiary's net worth has been increased or changed in character so that he/she should reasonably be expected to use some part of the capital for support.

(3) When transfer or sale of property is reported and it is not indicated that the transaction was made in the course of a business, continued entitlement will be determined under the criteria in 38 CFR 3.275. A formal finding will be required only as provided in paragraph 9.27.

(4) Payments to the claimant that have been deferred or are by installments will not be counted as income until an amount equal to the sales price has been received, irrespective of the fact that a portion may be identified as interest under a note, mortgage, trust or similar legal instrument.

b. **Transfer for Minimal Consideration.** If real property is transferred to a close relative or other person for minimal consideration, such as $1, a determination will be made as to whether legal right to receive the income from property was actually divested. It has been held that if the transferee has full legal right to receive the entire income, it is not to be considered the claimant's income. However, if after such transfer the claimant does have any right, title or interest in the property or income therefrom, then such property and income are considered as the claimant's to the same extent as prior to the transfer. (Op. G.C. 30-57)

SUBCHAPTER V. EVR's (ELIGIBILITY VERIFICATION REPORTS)

9.43 EVR SELECTION AND MAILING

a. **General.** The EVR (Eligibility Verification Report) is used by VA to verify the continued eligibility of recipients of its income-based programs. The EVR replaced the AIQ (Annual Income Questionnaire) in 1985. The change in nomenclature emphasizes that the EVR is intended to elicit dependency and net worth information as well as income information. AIQ's were sent to beneficiaries at the end of the calendar year. EVR's are designed to be used throughout the year and can be used whenever income information is needed from a beneficiary. However, every beneficiary must complete an EVR at least once during each calendar year. Failure to return a properly completed EVR when requested to do so by VA will result in suspension and eventual termination of a payee's income-based benefits.

b. **EVR Selection.** Release of EVR's to claimants is controlled by a master record diary under reason code 41. For example, if a payee's reason code 41 diary is set for November, the EVR is selected and printed by Hines DPC during end-of-month October processing (around October 16). The EVR will normally be mailed between October 20 and November 1. The beneficiary should receive the EVR by November 1. A beneficiary's reason code 41 diary date appears on the Target M-12 screen as the legend "issue EVR" followed by a month and a year.

(1) **Cases With Running Awards Fall 1985.** A one-time program established code 41 diaries for all cases that were already in a running status when the first EVR's were released in the fall of 1985.

(2) **Old Law, 306, Parents' DIC, Consolidated Payees.** The code 41 diary for these cases will always be set for October.

(3) **Manila Cases.** The code 41 diary for protected pension and Parents' DIC cases will be set for October. The code 41 diary for Improved Pension cases will be set for January.

(4) **Improved Pension Beneficiaries Living in Foreign Countries.** The code 41 diaries for these cases will be set based on the terminal digit as follows: 00-33 December; 34-66 January; 67-99 February.

(5) **New Improved Pension Cases.** If an original or reopened award is processed and there is no positive entry to select a diary date, the system generates a code 41 diary 12 months from the [commencement] date of the award. The adjudicator can select a different code 41 diary date via the DIAR command or by making an entry in the appropriate field on the 401 screen during award processing. However, the date selected cannot be less than 2 months or more than 12 months from the processing month. Do not change the code 41 diary date unless requested to do so by the payee.

[(6) **Improved Pension Elections.** If an Old Law or Section 306 pensioner elects Improved Pension, set the reason code 41 diary date to 12 months from the commencement date of the award.

c. **Changes to System Generated Diaries**

(1) It is possible for an adjudicator to change the reason code 41 diary on an Improved Pension case unless it is a foreign or consolidated payee case. However, do not change a reason code 41 diary date on an Improved Pension case in the absence of a specific request from the payee. For example, a beneficiary operating a farm or business might find it easier to report income on a calendar year basis. It would be permissible, upon request, to change such a beneficiary's reason code 41 diary date to January.]

(2) An EVR generates annually on the date established by the system unless:

(a) The regional office changes the code 41 diary or

(b) An adjudicator processes an amended award changing the case to a foreign or consolidated payee case, or changes the benefit type from Improved to protected pension.

d. **Diary Controls for Return of EVR**

(1) **Reason Code 42.** Reason code 42 is a system-generated diary for the return of an EVR. When the system issues the EVR the "Issue EVR" diary date on the M12 screen is replaced by an "EVR SUSP" diary date on the M12. If the EVR is not received before expiration of the reason code 42 diary period, the system suspends payment. The diary control period for receipt of protected pension and Parents' DIC EVR's is 3 months following their release on October 1; i.e., the suspense date is January 1 of the next year. The diary control period for Improved Pension cases is 2 months following their release. The actual date a case will go into suspense depends on the terminal digit. You can determine the approximate suspense date by referring to column 3c of the Compensation and Pension Schedule of Operations. If action is taken to resume the award such as processing a TR 13Q [amended award] or TR 47 [referral to Adjudication] before the last cycle of the month, the beneficiary will receive uninterrupted payments even though a letter may already have been issued indicating that the account was going to be suspended. See paragraph 9.48[c.

NOTE: TR 471 (Incomplete EVR) will not resume payments if TR 42 has matured and the case has already gone into EVR suspense.]

(2) **Reason Code 43.** If an EVR is coded incomplete on the E02 screen [before the code 42 diary matures,] the system replaces the code 42 diary with a code 43 diary. A code 43 diary extends by 2 months the allotted time for return of the EVR. A code 43 diary imposes EVR suspense if the EVR control is not cleared within the additional 2 months. For example, [a] Section 306 EVR is [coded incomplete (TR 471)] on October 20. The system changes the diary suspense date for return of the EVR from January 1 to March 1. [The M12 screen diary date legend for a code 43 diary is EVR SUSP INCPT.]

(3) **Establishment of New Reason Code 41 Diary.** When the code 42 or 43 diary matures or when the EVR control is cleared, next year's code 41 diary is automatically set for 12 months from the date of the last code 41 diary. Therefore, even though the current year's EVR may have been referred to Adjudication under TR 47, the M12 screen will show the code 41 "Issue EVR" diary for next year's EVR selection. Transactions 42, 45, 44, 47, 48, 49, and 13Q will all clear the EVR control and set the next year's code 41 diary date on the M12 screen. See paragraph 9.47.

[(4) **Identification of EVR Reporting Period.** You can use the M12 screen "DIARY REASON" to identify an Improved Pension beneficiary's EVR reporting period as follows: Subtract 12 or 24 months from a reason 41 (ISSUE EVR) diary date. Subtract 14 months from a reason 42 (SCHED EVR SUSP) diary date. Subtract 16 months from a reason 43 (EVR SUSP INCPT) diary date.]

e. **EVR Forms.** EVR forms can be released by the Hines DPC or by adjudicators.

(1) **EVR's Released by Hines DPC.** The following 11 EVR forms are released by Hines DPC as the result of a reason code 41 diary:

(a) Type 1S, VA Form 21-0511S, Old Law Eligibility Verification Report (Surviving Spouse)

(b) Type 1V, VA Form 21-0511V, Old Law Eligibility Verification Report (Veteran)

(c) Type 2S, VA Form 21-0512S, Section 306 Eligibility Verification Report (Surviving Spouse)

(d) Type 2V, VA Form 21-0512V, Section 306 Eligibility Verification Report (Veteran)

(e) Type 3, VA Form 21-0513, Old Law and Section 306 Eligibility Verification Report (Children Only).

(f) Type 4, VA Form 21-0514, DIC Parents' Eligibility Verification Report.

(g) Type 5, VA Form 21-0515, Improved Pension Eligibility Verification Report (Veterans With No Dependents).

(h) Type 6, VA Form 21-0516, Improved Pension Eligibility Verification Report (Veteran With Spouse).

(i) Type 7, VA Form 21-0517, Improved Pension Eligibility Verification Report (Veteran With Children).

(j) Type 8, VA Form 21-0518, Improved Pension Eligibility Verification Report (Surviving Spouse With No Children),

(k) Type 9, VA Form 21-0519, Improved Pension Eligibility Verification Report (Surviving Spouse and/or Children).

(2) **Use of Colored Paper.** Hines DPC will print EVR's on colored paper. The color to be used will be determined by the month of release as follows:

Green: January and July
Pink: February and August
Yellow: March and September
Blue: April and October
Buff: May and November
Goldenrod: June and December

(b) **Account Suspended for Bad Address.** Review the file and master record for evidence of a new address. Mail the EVR to the most current address of record.

(c) **Account in EVR Suspense From Prior Year.** Take action to terminate under 38 CFR 3.661. File the EVR in the claims folder.

(d) **Payee Reported Deceased or Remarried.** If the file contains reliable evidence that the payee is no longer eligible for pension or DIC, file the EVR in the claims folder.

(e) **All Other Cases.** Release the EVR if eligibility still needs to be verified and an EVR form has not been sent to the claimant within the last 60 days. If there is no point in sending the EVR to the claimant, file it down in the claims folder.

(2) **Category Code NOPA.** This code identifies cases with special law codes 03, 04, and 05. These are cases where a record purpose award was made to a veteran who does not receive payments because of incarceration, disappearance, or forfeiture, but whose dependents are receiving an apportionment. In each case, the apportionees get the lesser of the veteran's former rate or the death benefit payable to the apportionees. Therefore, the veteran's current income and net worth are not needed but the income and net worth of the apportionees are needed. Send the veteran's EVR and a VA Form 21-686c, Declaration of Status of Dependents, to the apportionee with a cover letter explaining that

(a) The apportionee must complete the EVR furnishing his or her income and net worth and that of any other dependents (if a factor for the benefit involved);

(b) The veteran's income and net worth need not be reported;

(c) The apportionment payee should sign the EVR in the signature block;

(d) The apportionee should fully complete the VA Form 21-686c; and

(e) Failure to return the completed EVR and VA Form 21-686c within 60 days will result in interruption of payments.

(3) **Category Code SL 17.** This code identifies awards to surviving spouses providing payment for children pending determination of the surviving spouse's entitlement. Do not release the EVR. File it in the claims folder and develop the children's income for continued entitlement.

(4) **Category Code NOAD.** This code identifies awards without a valid address in the master record. Review the claims folder and MINQ screen to determine if there is a valid address. If there is, mail the EVR. If there is not, leave the EVR in the file and allow the account to go into EVR suspense.

(5) **Category Code 4 Digit Payment Code.** These cases will be grouped separately and mailed to the responsible institutional payee by the Veterans Services Division.

(6) **Category Code RO 69.** These cases will be sent to Washington regional office.

g. **Manila Cases.** Manila EVR's are shipped to Manila for mailing to beneficiaries. A VA Form 20-8270A-1, Control and Adjustment Notice (Manila Only), will be prepared for each Manila EVR. VA Form 20-8270A-1 can be used as a local control document and for entry of transactions 41, 42, 44, and 45. Transaction 44 will process as transaction 46.

h. **Foreign Cases.** EVR's addressed to beneficiaries residing in foreign countries other than the Philippines are mailed directly to the payee.

9.44 REVIEW OF EVR's BEFORE PROCESSING

a. **Overview**. The Target E01 and E02 screens are used to show that a beneficiary's EVR was received and to code the EVR eligibility information furnished by the beneficiary into the system. If the EVR is fully completed and the information from the EVR passes all edits, the E02 screen generates a transaction 49 which clears the EVR control and allows continued payments for another year. However, in many instances the person conducting the initial review of the EVR will have to return the EVR to the beneficiary or refer the EVR to an adjudicator. In some cases, the system will direct that the EVR be returned to the beneficiary or that it be referred to an adjudicator.

b. **EVR's Returned to Beneficiaries--Incompletes**

(1) **No Signature on EVR**. If the EVR is unsigned, it is incomplete. Return it to the payee for signature.

(2) **EVR Signed by Mark**. An EVR signed by mark (X) or thumbprint is acceptable only if the mark or thumbprint is accompanied by a separate sheet of paper containing the following statement: "I hereby certify that the information on this form is true and correct to the best of my knowledge and belief." The mark or thumbprint of the claimant must also appear below the certification statement along with the signatures, legible names, and legible addresses of two witnesses. The signature (with legible name and address) of one witness is acceptable if the witness is identified as a VA employee. Any signature by mark or thumbprint which is not properly witnessed under this subparagraph is not acceptable and the EVR must be returned as incomplete.

(3) **Blocks on EVR Blank**. The following blocks on EVR forms do not have to be completed by the beneficiary: net worth, medical expenses, educational expenses, SSI/public assistance, and nursing home patient status. If any of these blocks are left blank on the EVR, leave the corresponding blocks blank on the E02 screen and continue processing. (See par. 9.45.) If any blocks on the EVR other than those listed above are left blank, the EVR is incomplete. Return the EVR to the payee after coding the E02 screen to show that an incomplete EVR was received. *Under no circumstances* will the absence of a positive response to *any* question on the EVR be interpreted as "none" or "not applicable." Any unambiguous entry on an EVR (e.g., "none", "0", "--", "/", "n/a") is acceptable. Treat any indefinite entry such as "?" or "unknown" as no response and return the EVR to the payee after coding the E02 screen to show that an incomplete EVR was received.

(4) **E02 Screen Entry for Returned Cases**. If an incomplete EVR is to be returned to the claimant, enter an "X" in the INCOMPLETE field on the E02 screen and depress the ENTER key. This will generate a print for drop file and will result in a 471 transaction. The 471 extends the EVR due date for 2 months to give the payee ample time to complete the EVR properly before the account goes into EVR suspense.

(5) **Returning Incomplete EVR's**. VA Form 21-4174b, Request to Complete and Return Your Eligibility Verification Report, may be used to return incomplete EVR forms. If you need to communicate additional information to the payee, use FL 21-96 or a dictated letter. In some instances, it may be helpful to highlight pertinent parts of an EVR instruction sheet, VA Form 21-8983, and send it to the beneficiary with the returned EVR. If a FL 21-96 or dictated letter is used to return the EVR, attach a copy of the letter to the Target print for drop file in the claims folder. If VA Form 21-4174b is used to return the EVR, annotate the Target print "Returned via VAF 21-4174b". It is not necessary to retain a photocopy of the returned EVR for file.

c. **EVR's To Be Referred to Adjudication Without Prior Coding on E01/E02 Screens**

(1) **EVR Completely Blank**. If we receive an EVR which is blank and unsigned, refer it to Adjudication without coding any entries on the E01/E02 screens. The adjudicator shall review the master record and claims file to determine whether the payee has died or changed address. If there is no indication that the payee has died, remail the EVR to the last address of record. Annotate the file in the claims folder to reflect the date the EVR was remailed and the address to which it was remailed. If the EVR is returned a second time with no entries, file it down and let the account go into EVR suspense.

(2) **Whereabouts Unknown**. If a blank EVR is returned because the payee's whereabouts are unknown, refer the EVR immediately to an adjudicator. Do not process the EVR on the E01/E02 screens. The adjudicator shall review the master record and claims folder file to determine whether the payee has died or changed address. If there is no indication that the payee has

"none", "0", "---", "/", "n/a") is acceptable. Treat any indefinite entry such as "?" or "unknown" as no response and return the EVR to the payee after coding the E02 screen to show that an incomplete EVR was received.

[NOTE 1: If the beneficiary answered "No" to the question "Did any income change (increase/decrease) during the past 12 months?", the beneficiary is not required to make any entry in the blocks for "types of income changed", "date(s) income changed", and "reason(s) income changed".]

NOTE [2]: If net worth in the master record is $10,000 or more, BEVR processing requires a net worth entry on the E02 screen. If the E02 screen demands an entry in the net worth field and net worth was blank on the EVR, refer the EVR to Adjudication.

4) **E02 Screen Entry for Returned Cases.** If an incomplete EVR is to be returned to the claimant, enter an "X" in the INCOMPLETE field on the E02 screen and depress the ENTER key. This will generate a print for drop file and will result in a 471 transaction. The 471 extends the EVR due date for 2 months to give the payee ample time to complete the EVR properly before the account goes into EVR suspense.

5) **Returning Incomplete EVR's.** VA Form 21-4174b, Request to Complete and Return Your Eligibility Verification Report, may be used to return incomplete EVR forms. Check incomplete items on the EVR in red ink. If you need to communicate additional information to the payee, use FL 21-96 or a dictated letter. In some instances, it may be helpful to highlight pertinent parts of an EVR instruction sheet, VA Form 21-0510, and send it to the beneficiary with the returned EVR. If a FL 21-96 or dictated letter is used to return the EVR, attach a copy of the letter to the Target print for drop file in the claims folder. If VA Form 21-4174b is used to return the EVR, annotate the Target print "Returned via VAF 21-4174b". It is not necessary to retain a photocopy of the returned EVR for file.

c. **EVR's To Be Referred to Adjudication Without Prior Coding on E01/E02 Screens**

1) **EVR Completely Blank.** If we receive an EVR which is blank and unsigned, refer it to Adjudication without coding any entries on the E01/E02 screens. The adjudicator shall review the master record and claims file to determine whether the payee has died or changed address. If there is no indication that the payee has died, remail the EVR to the last address of record. Annotate the file in the claims folder to reflect the date the EVR was remailed and the address to which it was remailed. If the EVR is returned a second time with no entries, file it down and let the account go into EVR suspense.

2) **Whereabouts Unknown.** If a blank EVR is returned because the payee's whereabout are unknown, refer the EVR immediately to an adjudicator. Do not process the EVR on the E01/E02 screens. The adjudicator shall review the master record and claims folder file to determine whether the payee has died or changed address. If there is no indication that the payee has

died, remail the EVR to the last address of record. Annotate the file in the claims folder to reflect the date the EVR was remailed and the address to which it was remailed. If the EVR is returned a second time with no entries, file it down and let the account go into EVR suspense.

d. **EVR's To Be Referred to Adjudication After Coding on E01/E02 Screens**

(1) **Payee Deceased.** Refer to Adjudication any EVR showing the payee as deceased. Exception: Payee number is 00 and the person reviewing the EVR has FNOD (first notice of death) authority. If this is the case, process the FNOD.

(2) **Attached Mail Returned With EVR.** Refer to an adjudicator any EVR with an attachment other than a witness statement accompanying a signature by mark or thumbprint.

(3) **EVR Shows Change of Name or Address.** Refer to adjudication any EVR showing a change of name or address. Exception: EVR shows a change of address and the person reviewing the EVR has CADD authority. If this is the case, the person reviewing the EVR should process the CADD. However, if the EVR is referred to adjudication, the adjudicator is responsible for making sure that the change of address is processed.

(4) **EVR Returned a Second Time and Still Incomplete.** Refer to Adjudication any EVR with red marks (previously returned to the beneficiary as incomplete) that contains some entries but which is still incomplete. The adjudicator shall initiate further development unless it appears that the claimant is wilfully failing to cooperate. If this is the case, suspend and send a letter to the beneficiary explaining why the award has been suspended. See paragraph 9.44c above if the EVR is completely blank.

(5) **Questionable Signature.** The EVR must be signed by the person whose name appears as payee in the address segment of the EVR. If the address segment shows a person as custodian of, guardian of, wife of, or conservator of, the EVR must be signed by the guardian, wife, etc. If the EVR is signed in the name of a competent veteran but there is an indication that the signature is not that of the payee (e.g., by wife, by son), the EVR is not properly signed. No person is authorized to sign an EVR for the payee recognized by the VA. EVR's addressed to directors of hospitals or other institutions must be signed by the director of the institution or authorized designee. If the person performing the initial review of the EVR has any doubt as to whether it is properly signed, refer the EVR to Adjudication. Never clear an EVR unless it is signed by the proper person.

(6) **E02 Screen Entry for Referred Cases.** If an EVR is to be referred to Adjudication for one of the reasons listed in this subparagraph, put an "X" in the REFER EVR: ADJUDICATION field on the E02 screen and depress the ENTER key. The message CASE REFERRED will be printed. The referral results in automatic establishment of a PIF under end product 155 and in generation of a transaction 47. The transaction 47 will clear the current EVR control and establish a control for next year's EVR. Further control of the current year's EVR will be by means of the 155 PIF.

9.45 E01/E02 Screen Processing

a. **General.** The E01 screen allows the operator to list a maximum of 20 EVR's. The system then provides an E02 screen for each file number entered on the E01 screen. Fields on the E02 screen correspond to those on the EVR. As the operator transfers data from the EVR to the appropriate fields on the E02 screen, the system determines whether the EVR control can be cleared or whether the case must be referred to Adjudication. It is of the utmost importance that the person coding the E02 screen transfers the information from the EVR accurately. If a block is blank on the EVR, leave the corresponding field blank on the E02 screen. If there is any doubt concerning interpretation of data on the EVR, refer the case to Adjudication.

b. **Entries on the E01 Screen.** Access to the E01 screen from the READY screen is by entry of the BEVR command followed by the operator's password. When the E01 screen appears, the operator can list up to 20 cases. Show the file number, payee number, and stub name as preprinted in the claim number segment of the EVR. After listing this data for every case to be processed, depress the ENTER key. The Target System will edit each entry on the E01 screen. If an invalid entry is found, the system will highlight that entry and display a DATA INVALID message. Correct the highlighted entry and depress the ENTER key. Repeat this procedure until all cases listed on the E01 screen pass the Target edits. After editing is completed, the E02 screen for the first case listed will appear.

c. **E01 Screen Edits**

(1) **File Number**. The file number must contain from five to nine numbers. If nine numbers are entered (Social Security number), the first number cannot be 8 or 9 and none of the three subgroups (positions 1-3, 4-5, and 6-9) can be all zeros. The number may be entered with or without hyphens.

(2) **Payee Number**. The payee number must be 00, 10, 11-19, 31-39, 50, or 60.

(3) **Stub Name**. The stub name must contain from three to seven alpha characters and must be entered in one of the following formats:

A A AAAAA
A AAAAA
A AAAAA

d. **Entries on the E02 Screen**

(1) The first E02 screen appears after the operator has listed the EVR's to be worked on the E01 screen and depresses the ENTER key. The E02 screen displays the file number, payee number, and stub name for the first EVR that was listed on the E01 screen. If the master record stub name does not match the stub name on the E01 screen, the system will highlight the stub name and display the message STUB NAME NOT EQUAL TO MR–CORRECT OR REFER. If the stub name was incorrectly coded on the E01, it can be corrected on the E02. If the stub name was coded correctly from the EVR but this entry is still highlighted on the E02 screen, refer the case to Adjudication.

(2) For any EVR that is incomplete or requires immediate referral, code the appropriate field (INCOMPLETE or REFER EVR: ADJUDICATION) and depress the ENTER key. You may then continue on to the next E02 screen. For all other cases, move the cursor past the referral and incomplete fields and transfer the data from the EVR onto the E02 screen. The cursor will automatically advance to the appropriate field as determined by the type of EVR being processed. The system will display the message DATA MISSING if the operator fails to make an entry in a required field. If the corresponding block was blank on the EVR, put an "X" next to INCOMPLETE on the E02 screen and return the EVR to the beneficiary.

e. **E02 Screen Edits**. The Target System edits against the master record as each case listed on the E01 screen appears individually on an E02 screen. In some instances this edit identifies a condition which requires referral to Adjudication. The condition requiring referral might be identified by the system before or after coding of data on the E02 screen and might result in generation of a clear control transaction 47, a suspend transaction 48, or no generated transaction at all. A Target print generates for each referred case. Attach the print to the EVR and send it to Adjudication.

(1) **System Referral–No Generated Transaction**. The referral messages listed below are generated when the system identifies a condition requiring referral before the operator enters any data from the EVR on the E02 screen. If Target generates one of the following referral messages, the system does not create a PIF record nor does it affect the current year's EVR control (i.e., the account will go into EVR suspense if no further action is taken):

(a) NO MASTER RECORD FOUND (Check the EVR to make sure the file number and payee number were coded correctly on the E01 screen. If not, put the EVR aside for entry of the correct data on a subsequent E01 screen.)

(b) FILE NUMBER CHANGE

(c) M/R TERMINATED–PAYEE REMARRIED or M/R TERMINATED–PAYEE DECEASED

(d) BENEFIT NOT INCOME DEPENDENT

(e) IMPROPER JURISDICTION

(2) **System Referral–Transaction 47 Generated**. If Target generates any transaction 47 referral message (e.g., TX 47 STUB NAME MISMATCH, TX 47 MARITAL STATUS CHANGE, TX 47 NET WORTH EXCESSIVE), the system creates a PIF record under end product 155 and establishes next year's EVR control.

(3) **System Referral–Transaction 48 Generated**. If Target generates any transaction 48 referral message, the system has identified a potential overpayment situation. The account is suspended date of last payment in Improved Pension cases and January 1 in protected pension and Parents' DIC cases. The system generates a PIF record under end product 155 and establishes next year's EVR control.

f. **Termination of Processing**

(1) **E01 Screen**. You can stop processing at any time on the E01 screen by depressing the PA 2 key.

(2) **E02 Screen**

(a) If you begin coding income and dependency data onto the E02 screen and decide the case is incomplete or requires immediate referral, move the cursor back to the appropriate field. A positive entry in the referral or incomplete field overrides any other data entries.

(b) To discontinue processing on a case, enter "NXT" in the NEXT SCREEN field, depress the ENTER key, and the E02 screen for the next case will appear.

(c) To discontinue processing on ALL remaining cases, enter "END" in the NEXT SCREEN field and depress the ENTER key.

NOTE: When processing on the E02 screen, take special care to avoid accidentally depressing the PA 2 key. If you depress the PA 2 key, you will erase the case being processed as well as all remaining cases listed on the E01 screen.

g. **Disposition of Processed EVR's**. A printed message generates for each EVR processed on the E02 screen. Attach the printed message to the corresponding EVR and separate as follows:

(1) **Incompletes**. Return the EVR to the claimant. Attach the print to the file copy of the cover letter. (See par. 9.44b(5).)

(2) **Referrals**. Refer the EVR to adjudication under local procedures. The referral creates a PIF under end product 155.

(3) **EVR's Processed to Completion**. Attach the print to the EVR and send for drop filing in the claims folder.

9.46 END PRODUCT CREDIT–EVR's

a. End product 050 is credited automatically for any EVR successfully processed to completion on the E02 screen.

b. A single end product 155 is in order for all income issues raised by an EVR which is referred to adjudication. The 155 end product is established automatically when a case is referred to Adjudication off the E02 screen.

c. If development is required on both an income issue and a nonincome issue (e.g., dependency, special monthly pension), develop both issues under end product 155.

(1) If the payee reports the existence of a dependent who has income which would reduce the payee's rate of pension or for whom no income information is of record, develop under end product 155.

(2) If income must be developed and the payee also reports the existence of a dependent whose income would not reduce the rate of pension or reports that he or she is a patient in a nursing home, develop both issues under end product 155. If the

two issues are resolved at different times, take two end products. If both issues are resolved at the same time, take a single end product 155.

d. If the EVR furnishes sufficient income information to permit the EVR control to be cleared but the EVR raises a separate issue (e.g., dependency, special monthly pension), take the 155 end product when the transaction 45 or 13Q is processed. If a beneficiary reports the existence of a dependent without income or without enough income to reduce the rate of pension, develop for the dependent under end product 130. If the payee reports that he or she is in a nursing home, develop for entitlement to aid and attendance under end product 120.

e. If you request evidence in connection with EVR processing, leave the issue pending for at least 60 days unless a response is received sooner. You may not shorten the time to submit evidence by specifying a shorter period (e.g., 30 days, 15 days) in a development letter.

f. Process a transaction 49S if the EVR was cleared and end product 050 or 155 was taken but receipt of new income information requires updating the master record income segment only. Take a separate end product 150 for the 49S transaction.

Example–A veteran receiving 306 Pension whose EVR was cleared during the preceding month reports a change of income. The veteran's IVAP (income for VA purposes) is still well within the income limit. Establish end product 150 via the CADJ command. Enter the updated income information on the 306 screen. Put "49S" in the NEXT SCREEN field on the 306 screen and depress ENTER.

9.47 EVR TRANSACTIONS

a. **Stop Payment Transaction 41.** This transaction is limited to Manila "no-pay" accounts (RO 58 and 69). You can process a transaction 41 by coding the appropriate block on VA Form 20-8270A-1 or by doing a Target STOP transaction and making an entry in the EVR field on the 406 screen. Transaction 41 will not generate any notice to the beneficiary.

b. **Suspend Payment Transaction 42.** You can process a transaction 42 by coding the appropriate block on VA Form 20-8270A-1 (Manila cases) or by doing a Target SUSP transaction and making an entry in the EVR field on the 406 screen. Transaction 42 suspends payment and establishes next year's master record 41 diary.

c. **Clear Control Transaction 45.** You can process a transaction 45 by coding the appropriate block on VA Form 20-8270A-1 (Manila cases) or by entering the RESU command followed by "45P" in the SCREEN NUMBER field on the READY screen. Transaction 45 removes a master record 42 or 43 diary (see par. 9.43d), resumes benefits if the account is in EVR suspense, and establishes next year's master record 41 diary. Do not attempt to use transaction 45 if the award needs to be changed. If an adjustment is required, process a transaction 13Q.

d. **Continue or Resume Transaction 44.** This transaction is limited to Manila "no-pay" accounts (RO 58 only). Use this transaction if there is no change in the payee's income as previously established in the master record. This transaction removes any master record 42 or 43 diary, resumes benefits if the account is in EVR suspense, and establishes next year's code 41 diary.

e. **Notice of Receipt Transaction 47.** This transaction is generated automatically if an EVR is referred to Adjudication after processing on the E02 screen. Both operator referrals and system referrals generate transaction 47. Transaction 47 removes any master record 42 or 43 diary, resumes benefits if the account is in EVR suspense, and establishes next year's code 41 diary. It also creates a 155 PIF.

f. **Notice of Receipt Transaction 47I.** This transaction is generated automatically if an EVR is coded as incomplete on the E02 screen. It replaces a 42 diary with a 43 diary and extends the EVR suspense date by 2 months. It does not lift suspense nor does it change any other diary.

g. **Notice of Receipt Transaction 48.** This transaction automatically suspends the account if the entries coded onto the E02 screen indicate that further payments should not be made. If the payee is receiving protected pension or Parents' DIC, the suspense date will be January 1. Suspense will be date of last payment in Improved Pension cases.

h. **Accepted Transaction 49.** Transaction 49 is generated automatically if the entries coded onto the E02 screen pass all edits without causing issuance of a referral message. Transaction 49 is appropriate only when information on the EVR indicates that no change in payments is warranted. Transaction 49 updates the master record income segment, lifts suspense, clears a 42 or 43 diary, and establishes next year's 41 diary.

i. **Amended Award Transaction 13Q.** Transaction 13Q is the same as a regular amended award (TR13C) except that an entry was made in the EVR field on the 306 screen. Use transaction 13Q if an account under EVR control must be adjusted or terminated. This transaction clears a 42 or 43 diary and establishes a 41 diary for next year.

9.48 EVR LETTERS

a. An accepted transaction 49 or clear control transaction 45 generates a continuation letter from the central system. The system issues continuation letters without drop file or power of attorney copies. Continuation letters cannot be suppressed.

b. An accepted transaction 49 that terminates a protected pension case issues a termination letter from the central system. The letter will include a drop file copy. If the claimant has a power of attorney, the system issues two additional copies for the power of attorney. Termination letters cannot be suppressed.

c. An amended award transaction 13Q generates an amended award letter from the Target letter file. Suppress this letter on the 501 screen if a dictated letter is required. Complete the "overpayment paragraph" field on the 501 screen for 13Q awards that create overpayments. Additionally, the provisions of DVB Circular 20-82-1 apply to 13Q transactions. If a 13Q award increases benefits and a debt exists, refer the file to Finance before authorization. If a 13Q award decreases but continues benefits, refer the file to Finance if there is an existing indebtedness and no current collection activity is shown on the M-11 screen.

d. Hines DPC sends due process letters to payees upon processing of the suspense transactions during each month's updating cycles for the maturing reason code 42 and 43 diaries. A power of attorney copy is prepared.

e. Since a stop pay transaction will not generate a letter, you must prepare a dictated letter or an amended award if you are terminating an award for excessive income. However, a stop pay in conjunction with the appropriate 209 screen entry will generate a letter when termination is required for failure to submit an EVR. (See par. 9.50c below.)

9.49 EVR PROCESSING BY ADJUDICATORS

a. **General.** Adjudicators shall not under any circumstances clear EVR's which are incomplete or which are not properly signed. The rules in paragraph 9.44b(3) concerning incomplete EVR's and paragraph 9.44d(5) concerning signatures on EVR's apply to adjudicators as well as to the individuals doing the initial review of the EVR. If an EVR is incomplete or not properly signed, initiate development and use the PCHG command to extend the 155 PIF for 60 days from the date of the development letter.

NOTE: Adjudicators have no authority to code "NONE" on a 306 screen if the payee has left the corresponding block blank on the EVR.

b. **Adjustment of Improved Pension Awards**

(1) **Increased Income Reported on EVR.** If the claimant reports an increase in income of $400 or more from any single source but the date of the increase is unclear, reduce date of last payment and develop for date of receipt of the increase. If the reported increase is less than $400, or if after development the exact month of increase cannot be determined, count the income from the beginning of the EVR reporting period during which the increase occurred.

(2) **Decreased Income Reported on EVR.** If the beneficiary reports a decrease in recurring income, the increase in benefits is payable the day after the decrease in income occurred (subject to 38 CFR 3.31). If the beneficiary reports a decrease in nonrecurring or short term/sporadic income, the increase is payable from whichever is later–the beginning of the EVR reporting period (subject to 38 CFR 3.31) or the date the nonrecurring or short term/sporadic income was first counted against the payee.

(3) **Medical Expenses Reported on EVR.** Do not allow a deduction for medical expenses unless the payee has fully completed the family medical expense section of the EVR form. The beneficiary must at least show the month and year the expenses were paid, the nature of the expenses, the name and address of the payee, and the relationship of the person for whom the expenses were paid. If any of this information is missing, leave the 155 end product pending for 60 days and ask the beneficiary to fully complete VA Form 21-8416. The beneficiary may lump together a series of related payments to a single payee, provided the inclusive dates of the payments are shown clearly on the EVR or VA Form 21-8416. However, initiate development if there is any question as to the date the expenses were paid, the reason for the expenses, the payee of the expenses, or the relationship of the person for whom the expenses were paid.

(4) **Dependency Change Reported on EVR**

(a) **Dependent's Income Makes IVAP Excessive.** If an Improved Pension beneficiary reports a new dependent whose income makes the veteran's income excessive after application of the higher income limitation for the unestablished dependent, terminate the award effective the month after the dependent was acquired or income became excessive. If the date the dependent was acquired or the date income became excessive is not of record, suspend the account and develop. If, after development, the beneficiary does not furnish the requested information, terminate effective the beginning of the EVR reporting period.

(b) **Dependent's Income Reduces Rate of Pension.** If an Improved Pension beneficiary reports a new dependent whose income will reduce the beneficiary's rate of pension, reduce the award to the rate with the new dependent and the dependent's income effective date of last payment. Continue the 155 end product and initiate development to resolve the status of the dependent. If the beneficiary does not furnish evidence required to determine whether the claimed dependent can be recognized for VA purposes, request a field examination and extend end product 155 until the status of the dependent can be resolved.

(c) **Dependent's Income Does Not Reduce Rate of Pension.** If the new dependent has no income or if the dependent's income does not reduce the rate of pension, develop the dependent under end product 130. If the claimant does not furnish the evidence necessary to establish the dependent, take the 130 end product for failure to prosecute.

(d) **Dependent's Income Questionable.** If an unestablished dependent's income is questionable but it does not appear that it will result in reduction of the rate of pension, leave end product 155 pending and initiate development to ascertain the dependent's income and status as a dependent for VA purposes.

1. **Dependency Evidence Not Received–Income Will Not Reduce Rate.** If development establishes that the dependent's income will not reduce the rate of pension, but evidence to pay additional benefits for the dependent is not received within 60 days of request, take the 155 end product and do not include the dependent on the award.

2. **Dependency Evidence Received–Income Still Questionable.** If development establishes that the dependent can be recognized for VA purposes but the beneficiary does not furnish requested information concerning the dependent's income, suspend the account and send a second request for clarification of the dependent's income. If the beneficiary does not furnish all requested income information within 60 days, terminate the award effective the beginning of the EVR reporting period or the first of the month after the month during which the dependent can be established, whichever is later.

3. **Dependency Evidence Not Received–Income Will Reduce Rate.** If development does not resolve the issue of whether the dependent can be established for VA purposes but it does indicate that the dependent's income will reduce the rate of pension, reduce the award effective date of last payment to the rate with the dependent and the dependent's income and send a second request for the evidence necessary to resolve the status of the dependent. Continue the 155 end product for 60 days. If the beneficiary does not furnish the required evidence within the additional 60 days, request a field examination to determine whether the dependent can be recognized. Extend end product 155 until the status of the dependent can be resolved.

4. **Dependency Evidence Not Received–Income Questionable.** If development does not resolve the issue of whether the dependent can be established for VA purposes and does not establish whether or not the dependent's income will reduce the rate of pension, request a field examination to determine whether the dependent can be recognized and to clarify the dependent's income situation. Extend end product 155 until both dependency and income can be resolved.

c. **Adjustment of 306 and Old Law Pension Cases**

(1) **Income**. The main issue in reviewing a 306 or Old Law Pension EVR is whether the claimant's IVAP has exceeded or will exceed the applicable income limitation.

(a) If the payee's exact IVAP cannot be determined from review of the EVR but it appears that income may be near the income limit, initiate development to ascertain exact calendar year income.

(b) If the payee's exact IVAP cannot be determined from review of the EVR but income is obviously below the income limit, attempt to get accurate income information into the master record. However, do not initiate development to determine exact income. If the M-15 screen shows *verified* Social Security or other Federal benefits, use the higher of the verified rate or the rate reported on the EVR. For other types of income, use the figures reported by the claimant unless contradicted by reliable evidence in the file.

(c) Do not show medical expenses on the 306 screen in protected pension cases except in 306 Pension cases where continuing medical expenses are needed to keep IVAP within the income limit.

(2) **Dependency**

(a) **Old Law Pension**. Develop a reported dependency change only if a veteran without dependents reports gain of a dependent.

(b) **306 Pension**. Develop a reported dependency change only in the following situations:

1. The payee reports gain of a schoolchild or a helpless child and continuity of entitlement to additional benefits for the child potentially exists;

2. A single veteran reports marriage; or

3. A veteran without dependents reports gain of a child.

(c) **Consequences of Establishing New Dependents**. Although additional benefits cannot be paid for newly established dependents in Old Law and 306 Pension cases, a higher income limitation applies when a single veteran establishes a dependent and establishment of the dependent will prevent reduction of benefits during an extended period of hospitalization at government expense. (See par. 9.10c.)

(d) **Resolving Status of Unestablished Spouse/306 Cases**. If a 306 Pension veteran reports the existence of an unestablished spouse whose income puts the veteran's IVAP above the limit for a veteran with dependents, terminate the award effective the first of the next year. If the spouse's income is not a factor, take the 155 end product when the EVR is cleared and develop for the status of the spouse under end product 130. If the spouse's income is questionable but may cause IVAP to exceed the veteran and spouse income limit, suspend payments effective the first of the next year and develop under end product 155. If the veteran fails to furnish requested evidence, assume that the spouse's income will cause IVAP to exceed the income limit and terminate the award effective the first of the next year.

(e) **Dependency Change Makes Improved Pension Election Advantageous**. If an Old Law or 306 Pension beneficiary loses a dependent, consider the possibility that an election of Improved Pension might be advantageous. If the payee is entitled to more money under Improved Pension, invite an election.

d. **Adjustment of Parents' DIC Cases**

(1) **Increased Income Reported on EVR**. IVAP in Parents' DIC cases is counted on a calendar year basis. Do not reannualize Parents' DIC IVAP when income changes during a calendar year as you would in an Improved Pension case. Although Parents'

DIC IVAP is computed on a calendar year basis, the end-of-month rule applies to reductions in Parents' DIC due to increased income.

Example 1–A parent receives DIC based on $0 IVAP. On the 1985 EVR the parent reports having started receiving earned income of $200 per month on September 3, 1985. Adjust the parent's IVAP to $800 effective October 1, 1985 (four checks received during calendar year 1985). Adjust IVAP to $2,400 effective January 1, 1986 (parent will receive 12 checks for $200 during calendar year 1986).

Example 2–A parent's EVR reports receipt of $10,000 from the State lottery on March 14, 1985. Terminate the award effective April 1, 1985. The award can be reopened January 1, 1986 (subject to 38 CFR 3.31) if calendar year 1986 IVAP is within the income limit.

(2) **Decreased Income Reported on EVR**–If the claimant reports less income than was anticipated, pay the increased rate from January 1, or, if 38 CFR 3.31 is applicable, from February 1. The applicability of 38 CFR 3.31 will be determined by whether the received year rate (based on actual income rather than anticipated income) exceeds that payable at the end of the preceding calendar year.

Example 1–A parent received DIC at the rate of $100 per month during December of 1984. The parent's rate went down to $50 per month effective January 1, 1985, because more income was expected for calendar year 1985. However, on the 1985 EVR the parent reports IVAP which entitles him or her to a 1985 rate of $75 per month. Pay the $75 rate from January 1, 1985. Section 3.31 does not apply because the January 1, 1985, rate was lower than the December 1, 1984, rate.

Example 2–In 1984 a parent is receiving DIC based on IVAP of $2,400. The parent's only income is $200 per month earnings. The EVR shows that the parent was no longer employed as of October 28, 1985. Total earned income received during calendar year 1985 was $2,000. Pay based on IVAP of $2,000 from January 1, 1985. Since the new rate is higher than the December 1984 rate, the increase is not payable until February 1, 1985 (38 CFR 3.31). Pay based on IVAP of $0 from February 1, 1986.

(3) **Dependency Change Reported on EVR.** Any change in a parent's marital status requires an adjustment of the DIC award. See paragraph 9.18 for specific rules concerning adjustments due to changes in a parent's marital status.

9.50 TERMINATION FOR FAILURE TO RETURN EVR (38 CFR 3.661)

a. **Effective Date of Termination.** If an Old Law or Section 306 beneficiary has not returned the EVR before receipt of VA Form 20-6560 with message code 677 (Case in EVR SUSP 5 MO-CHANGED TO REG SUSP), discontinue benefits January 1 of the expected year (i.e., January 1, 1986, for the EVR issued during October 1985). If an Improved Pension or Parents' DIC beneficiary fails to return the EVR before receipt of the 5 months notice, discontinue benefits effective the first day of the EVR reporting period or the commencing date of the original or reopened award, whichever is later. You can identify the beginning of the EVR reporting period for an Improved Pension beneficiary by subtracting 2 years from the issue EVR diary date on the M-12 screen. If the beneficiary's current entitlement is for Improved Pension and the payee elected during the received year, terminate as of the effective date of the award of Improved Pension.

b. **Resumption of Benefits.** If we receive the EVR within 12 months of the received year, resume payments from the date of termination if otherwise in order. In all other cases, resume payments no earlier than the date of receipt of the reopened claim (subject to 38 CFR 3.31). An Old Law or Section 306 beneficiary who does not provide eligibility information within the calendar year following the effective date of termination is no longer "protected" and has potential entitlement to Improved Pension only.

c. **Processing EVR Terminations**

(1) Use the following procedure if it is necessary to terminate a beneficiary's award for failure to return the EVR:

(a) Establish a 150 pending issue under the CADJ command.

(b) Make the appropriate entry in the EVR NOT RETURNED field on the Target 209 screen.

(c) Go to the S99 screen and DISP to adjudicator.

(d) Process a STOP transaction on the same 150 PIF.

(2) The EVR termination letter is generated the same day the 209 screen is completed regardless of when the STOP is processed or authorized. Authorizing the STOP transaction the same day does not cause the letter to be suppressed.

SUBCHAPTER VI. TRIENNIAL ELIGIBILITY VERIFICATION

9.51 TRIENNIALS—GENERAL INFORMATION

a. Triennial Eligibility Verification involves parents in receipt of death compensation and veterans in receipt of disability compensation who receive additional benefits for parents. In either case, the issue is whether the parent is still dependent under 38 CFR 3.250.

b. Verification of parental dependency is done triennially. The years 1984, 1987, 1990, etc., are triennial years. Each parent in receipt of death compensation and each disabled veteran receiving benefits for a dependent parent is required to complete VA Form 21-509, Statement of Dependency of Parent(s), during a triennial year. If the VA Form 21-509 is properly completed and signed and the evidence shows that the parent is still "dependent" under 38 CFR 3.250, clear the control and the case will not be subject to periodic review for another 3 years. The completed forms will be filed in the veteran's claims folder or XC folder as appropriate.

9.52 MAILING OUT VA FORM 21-509

a. **Special Handling Not Required.** If special handling is not required, VA Forms 21-509 are mailed to the beneficiary by Hines DPC on or about August 1. VA Forms 21-509 in death compensation cases are transmitted with VA Form 21-8989, [Triennial Cover Letter-Death,] as a cover letter. VA Forms 21-509 in disability compensation cases are transmitted with VA Form 21-8991, [Triennial Cover Letter-Live,] as a cover letter. The texts of VA Form 21-8989 and VA Form 21-8991 are shown in addendums B and C to this chapter.

b. **Special Handling Required.** If special handling is required, the regional office of jurisdiction receives a copy of the VA Form 21-8989 (death cases) and VA Form 21-8991 (live cases) with the special handling category coded at the top of the form. The following cases require special handling:

(1) **Suspended Cases.** Pull the file and determine why the account is in suspense. If it appears that verification of dependency is required, send the veteran or parent a VA Form 21-509 with VA Form 21-8989, VA Form 21-8991, or other appropriate cover letter.

(2) **Incorrect Address.** If the system identifies an incorrect address in the master record, the account is selected for special handling. Send VA Form 21-509 with VA Form 21-8989, VA Form 21-8991, or other appropriate cover letter to the most recent address of record.

(3) **Philippine Cases.** Philippine cases are sent to the Manila [regional office]. Establish a local 130 future diary on these cases as there will be no master record diary control if the regional office of jurisdiction is 58[ ]. Set the 130 diary to mature in time to permit suspension of death compensation cases and reduction of disability compensation cases effective January 1 of the next year.

(4) **Consolidated Payment Cases.** VA Form 21-509 and the cover letter are mailed to the responsible institutional payee by the Veterans Services Division.

(5) **Awards Scheduled To Terminate on or Before January 1.** If the award is scheduled for termination on or before January 1, of the next year, pull the file and verify that termination is in order. If it is, do not mail out the VA Form 21-509.

9.53 CONTROLS FOR RETURN OF VA FORM 21-509

a. **Philippine Cases ([RO 58]).** Establish a 130 future diary to mature in time to permit suspension of death compensation cases and reduction of disability compensation cases effective January 1 of the next year.

b. **All Other Cases.** A master record diary is set automatically for all cases (except Philippine cases) subject to triennial eligibility verification. Master record diary code 46 is used for both death compensation and disability compensation cases. The diary is set at the time the VA Form 21-509 and cover letters are mailed out early in August. Code 46 diaries will mature during cycle 0 of January. (See par. 9.55.)

9.54 VA FORM 21-509 RETURNED BY BENEFICIARY

a. **Review of VA Form 21-509.** If the VA Form 21-509 is returned by the payee, review the form for completeness and proper signature. All blocks on the form which pertain to a particular beneficiary should contain some positive entry. If a block is blank, DO NOT assume "none" or "N/A". If the form is incomplete or not properly signed, return it to the payee. In disability compensation cases, VA Form 21-509 must be signed by the veteran.

[b. **Potential Aid and Attendance Entitlement.** An additional $79 in death compensation may be payable if the parent is a patient in a nursing home or is so disabled as to require the regular aid and attendance of another person. Adjudicators shall be alert to indications of potential aid and attendance entitlement and develop as appropriate. If development for aid and attendance is initiated because of an entry on a parent's VA Forms 21-509, the date of receipt of the VA Form 21-509 may be used as the date of claim for aid and attendance effective date purposes.

c. **Parent No Longer Dependent**

(1) **Administrative Decision Required.** Title 38, Code of Federal Regulations, section 3.250 is the standard for determining whether a parent continues to be "dependent". If after review of VA Form 21-509 and any additional development it appears that the parent is no longer dependent, prepare an administrative decision under paragraph 14.34 for approval by an authorizer. Prepare the administrative decision on VA Form 21-5427, Corpus of Estate Determination, if the decision is based on excessive net worth of the parent. The administrative decision must show the date that dependency of the parent ceased to exist.

(2) **Predetermination Notice.** Before reducing or terminating an award because dependency of a parent has ceased, send the beneficiary a dictated letter advising the beneficiary of the proposed action and the date the reduction or termination will be effective. Establish a 60-day control.

(3) **Effective Date of Termination.** Reductions or terminations because dependency of a parent ceased are effective the end of the year during which dependency ceased under 38 CFR 3.660(a)(2). In some instances this may result in a retroactive adjustment.

(4) **Award Action.** Terminate death compensation awards and reduce disability compensation awards to the rate payable without the additional benefit for the parent or parents if dependency is determined to have ceased. Use reason code 56 on the termination or reduction line. Before making an award, check the M-12 screen for a code 46 diary. If a code 46 diary is still in the system, cancel it. Use end product code 130 for adjustments required because a parent is no longer dependent.

EXAMPLE: A parent in receipt of death compensation returns VA Form 21-509 during November of 1990. The VA Form 21-509 shows that the parent is in receipt of a substantial retirement benefit which was not reported on the VA Form 21-509 returned during October 1987. Further development reveals that the parent started receiving the retirement benefit in April of 1989. If you determine that dependency ceased during April of 1989 due to the additional income, stop the award effective January 1, 1990.

(5) **Potential DIC Eligibility.** If you determine that a parent in receipt of death compensation is no longer dependent, consider the possibility that the parent might be eligible for DIC and develop is appropriate. Note that under 38 CFR 3.261(c) net worth is not a factor for a DIC parent. If a parent who was in receipt of death compensation is determined to be entitled to DIC, the effective date of the DIC award is the date of receipt of an election under 38 CFR 3.400(c)(4).

EXAMPLE. A parent in receipt of death compensation returns a VA Form 21-509 during November of 1990. It shows that the parent has a large amount of money in the bank. Development reveals that the parent received a large inheritance during February of 1988. It is determined that dependency ceased to exist during February 1988 and the parent's death compensation award is stopped effective January 1, 1989. 38 CFR 3.660(a)(2). The adjudicator notices that because of high continuing medical expenses the parent's income is within the limit for DIC eligibility. The adjudicator writes to the parent to solicit an election of DIC and confirm income and expense information. The election of DIC is received on March 14, 1991. If the parent is otherwise eligible, DIC may be awarded from March 14, 1991 (subject to 38 CFR 3.31). No payments are in order between January 1, 1989, and April 1, 1991.

d. *VA Form 21-509 Shows Parent Still Dependent*

(1) *Award Action Before EOM January.* If the VA Form 21-509 is properly completed and it shows that the parent is still dependent, process a transaction 45 under end product 130. Transaction 45 is accomplished by processing a RESU and entering "45P" in the SCREEN NUMBER field on the Target ready screen. If transaction 45 is processed before EOM January when the code 46 master record diary matures, it will clear the 46 diary. This will prevent death cases from going into suspense January 1st and will prevent issuance of a writeout on live cases (see par. 9.55).

(2) *Award Action During or After EOM January*

(a) *Death Compensation Cases.*] If the VA Form 21-509 is properly completed and it shows that the parent is still dependent, process a RESU but do not enter "45P" in the SCREEN NUMBER field on the Target READY SCREEN. This will generate transaction 16 (resume) rather than transaction 45. Transaction 45 will reject if there is no 46 future diary. The 46 diary matures during EOM January.

[(b) *Disability Compensation Cases.* If the VA Form 21-509 is properly completed and it shows that the parent is still dependent, PCLR the pending issue.]

9.55 VA FORM 21-509 NOT RETURNED BY BENEFICIARY

a. *Death Compensation Cases.* If no transaction 45 is processed by cycle 0 of January, the code 46 master record diary matures. This causes automatic issuance of a due process letter, VA Form 21-8990, Due Process Letter for Parents in Receipt of Death Compensation, and puts the account into suspense effective January 1. The text of VA Form 21-8990 is shown in addendum D to this chapter. No further action is required until VA Form 20-6560, Notice of Benefit Payment Transaction, with message code 615 (account in suspense 6 months or more) is received. If a properly completed VA Form 21-509 still has not been submitted, review the file for the last evidence confirming the parent's continued dependency. Under 38 CFR 3.652(a)(1), dependency is considered to have ceased as of the end of the month in which it was last shown by the evidence of record to have existed. Under 38 CFR 3.660(a)(2), the award must be adjusted effective the end of the year during which dependency ceased. When you have determined the proposed effective date of termination, send a dictated letter advising the beneficiary of the proposed adjustment. Control for 60 days.

EXAMPLE. A parent in receipt of death compensation fails to return the VA Form 21-509 which was mailed out during August 1990. The system automatically suspends the account effective January 1, 1991, and sends VA Form 21-8990 (addendum D). VA Form 20-6560 with message code 615 is received during June of 1991. A review of the file indicates that the last evidence verifying the parent's dependency was a VA Form 21-509 which was signed October 28, 1987, and date stamped into the VA on November 7, 1987. Consider that dependency was last verified as of November 7, 1987. Send the parent a letter advising that we propose to stop the award effective January 1, 1988, for failure to confirm continued dependency. Enclose another VA Form 21-509. If there is no response within 60 days, stop the award effective January 1, 1988.

b. *Disability Compensation Cases.* If the code 46 master record diary is not canceled by cycle 0 of January, it matures and causes issuance of VA Form 20-6560 with message code 693 (REVIEW FOR ADJUSTMENT-VET DEP QUES NOT REC'D). When the VA Form 20-6560 is received, pull the file. Review the file for the last evidence confirming the parent's continued dependency. Under 38 CFR 3.652(a)(1), dependency is considered to have ceased as of the end of the month in which it was last shown by the evidence of record to have existed. Under 38 CFR 3.660(a)(2), the award must be adjusted effective the end of the year during which dependency ceased. When you have determined the proposed effective date of reduction, send a due process letter advising the veteran of the proposed adjustment. Control for 60 days.

EXAMPLE. A veteran receiving additional disability compensation for a dependent parent fails to return the VA Form 21-509 which was mailed out during August 1990. VA Form 20-6560 with message code 693 is received during January of 1991. A review of the file indicates that the last evidence verifying the parent's dependency was a VA Form 21-509 which was signed December 28, 1987, and date stamped into the VA on January 15, 1988. Consider that dependency was last verified as of January 15, 1988. Send the veteran a letter advising that we propose to reduce the award to the rate payable without the additional benefit for the parent or parents effective January 1, 1989. Enclose another VA Form 21-509. If there is no response within 60 days, adjust the award effective January 1, 1989.

LISTING OF POSSIBLE MEDICAL EXPENSES

Abdominal supports
Acupuncture service
Ambulance hire
Anesthetist
Arch supports
Artificial limbs and teeth
Back supports
Braces
Cardiographs
Chiropodist
Convalescent home (for medical treatment only)
Crutches
Dental service (e.g., cleaning, x ray, filling teeth)
Dentures
Dermatologist
Eyeglasses

Food or beverages specially prescribed by a physician (for treatment of illness, and in addition to, not as a substitute for, regular diet; physician's statement needed)

Gynecologist
Hearing aids and batteries
Home health services
Hospital expenses
Insulin treatment
Invalid chair
Lab tests
Lip reading lessons (designed to overcome a handicap)
Neurologist
Nursing services (for medical care, including nurse's board paid by you)
Occupational therapist
Ophthalmologist
Optician
Optometrist
Oral surgery
Osteopath, licensed
Pediatrician
Physical examinations
Physician
Physical therapy
Podiatrist
Prescriptions and Drugs
Psychiatrist
Psychoanalyst
Psychologist
Psychotherapy
Radium therapy
Sacroiliac belt
Seeing-eye dog and maintenance

LISTING OF POSSIBLE MEDICAL EXPENSES -Continued

Speech therapist
Splints
Supplementary medical insurance (Part B) under Medicare
Surgeon
Telephone/teletype special communications equipment for the deaf

Transportation expenses for medical purposes (20 cents per mile plus parking and tolls or actual fares for taxi, buses, etc.)

Vaccines

Vitamins prescribed by a doctor (but not as a food supplement or to preserve general health)
Wheelchairs
Whirlpool baths for medical purposes
X rays

TRIENNIAL COVER LETTER–DEATH COMPENSATION CASES–VA FORM 21-8989

All parents in receipt of death compensation are required to complete and return the enclosed VA Form 21-509, Statement of Dependency of Parent(s).

The completed VA Form 21-509 should be returned to the address shown on this letter within 60 days. If we do not receive the completed VA Form 21-509 within 60 days, it will be necessary to suspend payment of your death compensation.

Do not leave any blocks on VA Form 21-509 blank. If your answer is "none" or "not applicable", write "NONE" or "N/A" in the appropriate block. Please be sure to sign the form in the block provided.

If you mail your VA Form 21-509 from overseas, affix airmail postage. For faster overseas mail delivery, you may ask the nearest American Consulate to forward the completed VA Form 21-509 to the Veterans Administration.

If you need assistance in completing the VA Form 21-509, please contact the nearest VA office or, if overseas, the nearest American Consulate. You may also contact any accredited veterans organization representative or any local, county, or State veterans group for help in preparing your response.

VETERANS ADMINISTRATION

Enclosure: VA Form 21-509

best copy available

TRIENNIAL COVER LETTER - DISABILITY COMPENSATION CASES - VA FORM 21-8991

All veterans in receipt of additional compensation for a dependent parent or parents are required to complete and return the enclosed VA Form 21-509, Statement of Dependency of Parent(s).

The completed VA Form 21-509 must be returned to the address shown on this letter within 60 days. If we do not receive the completed VA Form 21-509 within 60 days, it will be necessary to discontinue the additional benefits you are receiving for your parent(s) effective January 1, _____ .

Do not leave any blocks on VA Form 21-509 blank. If your answer is "none" or "not applicable", write "NONE" or "N/A" in the appropriate block. You must sign the VA Form 21-509 in the block provided.

If you mail your VA Form 21-509 from overseas, affix airmail postage. For faster overseas mail delivery, you may ask the nearest American Consulate to forward the completed VA Form 21-509 to the Veterans Administration.

If you need assistance in completing the VA Form 21-509, please contact the nearest VA office or, if overseas, the nearest American consulate. You may also contact any accredited veterans organization representative or any local, county, or State veterans group for help in preparing your response.

VETERANS ADMINISTRATION

Enclosure: VA Form 21-509

TRIENNIAL DUE PROCESS LETTER--DEATH CASES--VA FORM 21-8990

Approximately 5 months ago we sent you a VA Form 21-509, Statement of Dependency of Parent(s), and asked that you complete and return it within 60 days. As of this date, we have not received the completed VA Form 21-509. Therefore, it will be necessary to suspend your payments.

Another VA Form 21-509 is enclosed. You should fully complete this form and return it to the address shown on this letter as soon as possible. Do not leave any blocks on this form blank. If your answer is "none" or "not applicable", write "NONE" or "N/A" in the appropriate block.

If you need assistance in completing VA Form 21-509 or if you have misplaced it, any VA office can help you. You may also contact any accredited veterans representative or any local, county, or State veterans group for help in preparing your response.

If we do not receive a fully completed VA Form 21-509 by February 1, it will be necessary to terminate your payments effective January 1, _____ .

VETERANS ADMINISTRATION

Enclosures: VA Form 21-509
VA Form 1-4107

EVR CONTINUATION LETTER

(POA Code)

RO ADDRESS

DATE

CLAIMANT NAME AND ADDRESS

FILE NUMBER

STUB NAME

Based on our review of your Eligibility Verification Report (and our determination that your net countable income is $XXXXX,) your award of (pension, improved pension, dependency and indemnity compensation is being continued.

Current Monthly/Annual Rate: XXX.XX
Previously scheduled future rate changes will provide for payment as follows:

Monthly/Annual Rate	EFFECTIVE DATE
XXX.XX	XX-XX-XX

Additional lines, up to 6 lines total

(You will be advised of future rate changes occurring after the last date shown.)

We are considering your own income of $XXXXX from earnings, $XXXXX from Social Security (based upon a monthly payment of $XXXX.XX), $XXXXX from annuity/retirement and $XXXXX from other sources.

We are considering your spouse's income of $XXXXX from earnings, $XXXXX from Social Security (based upon a monthly payment of $XXXX.XX), $XXXXX from annuity/retirement and $XXXXX from other sources.

(We are considering your (child's/children's) income as well.

(We have considered medical expenses of $XXXXX, to reduce your income. If there are any changes in medical expenses, you must notify us.)

Notify us immediately if there is any change in your income or net worth and of any changes in your marital status or the number of your dependents.

Sincerely yours,

IMPORTANT—SEE REVERSE FOR PROCEDURAL AND APPELLATE RIGHTS
KEEP THIS LETTER FOR FUTURE REFERENCE

CHAPTER 10. CHILDREN—RELATIONSHIP AND SCHOOL ATTENDANCE

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CHAPTER 10. CHILDREN—RELATIONSHIP AND SCHOOL ATTENDANCE

SUBCHAPTER I. RELATIONSHIP

10.01 GENERAL

The term "child" [includes] natural children, stepchildren and legally adopted children. (See pars. 10.03, 10.04 and 10.05.) For VA purposes they must be unmarried and meet [ ] the [ ] requirements [of 38 CFR 3.57.]

NOTE: Effective January 1, 1975, a child whose marriage has been terminated by divorce or annulment, or death of his/her spouse is considered an "unmarried" child for VA purposes ([38 CFR 3.55(e)).]

10.02 EVIDENCE REQUIREMENTS

The evidence required to establish the birth and relationship of a child is outlined in [38 CFR 3.209 and 3.210.]

a. Documentary [ ] evidence will be required to establish proof of birth and relationship in a claim for VA benefits. (See also [par. 7.04 and 38 CFR 3.209 and 3.210.]) In addition, if a child is not in the custody of the person claiming allowance for the dependent, the claimant's statement providing the name and address of the person having custody is required unless information as to custody had been furnished within the year prior to the claim for the child(ren). Custody of a child by a veteran will be assumed as to a child born within the year prior to the claim unless there is evidence of estrangement.

b. An affidavit or certified statement will be required if the evidence for proof of age or relationship indicates a difference in the name of the person as shown by other records. ([See 38 CFR 3.209.)]

NOTE: Administrative determinations made by other Government agencies, such as Social Security Administration, will be considered but such decisions are not binding upon the VA when determining entitlement to VA benefits.

10.03 ADOPTED CHILD

a. Evidence Requirements. Evidence of relationship (and to establish the date of adoption) will consist of a [certified] copy of the decree of adoption (interlocutory or final) or a copy of the adoptive placement agreement entered into with an agency authorized by law of the jurisdiction so to act ([38 CFR 3.210(c)).] However, a [certified] copy of the revised birth certificate will be accepted to establish the relationship of an adopted child from only the date of receipt of such document. In the latter instance, the claimant will be informed of the evidence required to establish the date of adoption and the child's relationship from an earlier date. ([38 CFR 3.403(e)).]

(1) Impounded Record. The claimant will not be requested to furnish the decree of adoption when such evidence may not routinely be released by the custodian of the record or requires petition to the court.

(a) In such cases, the request for evidence will be restricted to other forms of acceptable evidence such as certified statements to establish the fact of adoption ([38 CFR 3.210(c)(1)).] These statements should include the date of the interlocutory or final decree and the name of the court that issued the decree. If the evidence is received within 1 year of the request, the award will be amended to pay additional monies from the date of adoption if the claim was filed within 1 year from that date.

(b) If the alternative evidence is not available or is deemed inconclusive when received, necessary proof may be obtained by inspection of the impounded records by a field examiner.

(2) Adoption by Surviving Spouse. In cases involving an adoption of a child by the veteran's spouse within 2 years after the veteran's death [(38 CFR 3.57(c)(2)),] the additional requirements may generally be met by the statement of the adopting parent (or present custodian) that the child was a member of the veteran's household at the time of the veteran's death and that regular contributions for the child's support were not being made by any other person or any organization.

(a) Recognition will not be precluded if the contributions for the child's support by any person or organization were occasional or cannot be considered as having provided for more than half of the child's maintenance, nor where periodic and substantial payments were promised if, in fact, the payments were not made or were discontinued prior to the veteran's death.

(b) Additional information may, however, be necessary when there is reason to question the adequacy or veracity of the statement.

(3) **Adoption Not Completed.** When a child recognized under an interlocutory adoption decree or adoptive placement agreement leaves the custody of the adoptive parent, or the court does not grant final approval of the adoption, allowance for such child will be discontinued effective the date the child left the adopting parents' custody or the date of rescission or termination of the decree or agreement, whichever is the earlier. ([38 CFR 3.503(j)])

b. **Determinations**

(1) Evidence of adoption which is regular on its face and uncontradicted will be accepted without a formal finding. However, a notation to this effect will be entered in "Remarks" on the award stating "Adoption Valid per M21-1, paragraph 10.03b."

(2) A formal finding will be prepared by an adjudicator for approval by the Adjudication Officer or designee *not below the level of [unit] chief* whenever there is an *unfavorable* determination or, when required by the following subparagraph, a favorable determination. The finding will be prepared in accordance with the format in paragraph 14.34.

(3) When documentary evidence in support of adoption appears irregular or it is indicated that the adoption procedure was not in conformity with the laws of the State involved, a request will be made for a legal opinion except when the circumstances are "on all fours" with those in a case in which a formal opinion has been made by the General Counsel or District Counsel. In such cases, a formal finding (favorable or unfavorable) will be required as provided in subparagraph (2) above.

c. **Foreign Adoptions.** In addition to the requirements outlined above, special evidence must be met in all cases involving adoptions under the laws of any jurisdiction other than a State (as defined in section 101(20) of title 38, United States Code) and including the Commonwealth of the Northern Mariana Islands.

(1) **Adoption by Veteran.** A child residing outside any of the United States shall not be considered to be a legally adopted child of a veteran during the veteran's lifetime unless the child meets all of the following requirements:

(a) The child was less than 18 years of age at the time of adoption:

(b) The child is receiving one-half or more of his/her annual support from the veteran;

(c) The child is not in the custody of his/her natural parent, unless that parent is the veteran's spouse;

(d) The child is residing with the veteran (or, in the case of a divorce following the adoption, with the divorced spouse who is also the adoptive or natural parent) except for periods during which the child is residing apart from the veteran (or the divorced spouse) due to full-time attendance at an educational institution or when the child or veteran is confined in a hospital, nursing home, health care facility, or other institution.

(2) **Recognition of Adopted Child After Veteran's Death.** A child shall not be considered to have been a legally adopted child of the veteran as of the date of the veteran's death unless:

(a) At any time within the 1-year period immediately preceding the veteran's death, the veteran was entitled to or was receiving additional monetary benefits for this child; or

(b) For a period of at least 1 year prior to the veteran's death, the child met the requirements of subparagraph (1)(a),(b),(c) and (d) above.

(c) For children adopted by the surviving spouse following the veteran's death, the provisions of subparagraphs (a) and (b) above and those contained in subparagraph a(2) of this paragraph all must be met.

(3) **Development and Control of Cases**

(a) Prior to the establishment of a child as the adopted child of the veteran, evidence meeting the requirements as outlined above must be of record along with an authenticated adoption decree (see par. 7.09). If complete information is not furnished with the claim for the child, a letter will be written to the claimant requesting this evidence. [Pending issue] control will be established with a 60-day control period [under] end product code 130 [ ] if the dependency is the sole or controlling issue.

(b) Upon the claimant's response, a decision will be made as to the establishment of the child as a dependent under the foreign adoption criteria. If there is doubt as to the validity of the adoption decree, whether the child resides with the veteran, or if the claimant is contributing one-half or more of the child's support, a field examination by the Veterans Services Officer or State Department representative will be requested as prescribed in paragraphs 5.12 and 7.07 prior to making the eligibility determination. A formal decision as outlined in paragraph 14.34 will be required if the decision is unfavorable. If the decision is favorable no formal determination will be required, but the award document will be annotated "Child established under foreign adoption criteria of M21-1, paragraph 10.03c." In addition, a [master record] control must be established with a reason code "22" for 1 year from the date of establishment of the child as the dependent of the beneficiary.

(c) On expiration of the diary, a 60-day [pending issue] control will be established under end product code 130. The claimant will be requested by letter to furnish a certified statement indicating the name and address of the person having custody of the child and person or persons who provide the child's support, including the amount provided by each. In addition, the claimant will be advised that payments for such child will be discontinued unless the evidence requested is furnished within 60 days of the date of the letter.

(d) If the evidence establishes the child's continuing eligibility, a new [master record] control for 1 year from the current date will be established under diary reason "22." If the evidence is unfavorable, a formal determination will be in order and the claimant informed of the decision. If there is reasonable doubt as to the validity of the response, a new field examination may be requested prior to making the determination of continued entitlement.

10.04 STEPCHILD

a. **Member of Household.** The question of whether a child may be considered a member of a veteran's household is one of the facts to be determined on the basis of all the circumstances in the individual case. Recognition of a stepchild extends to those cases in which the relationship arose through a "deemed valid" marriage or when the child is a child of the spouse of the veteran.

(1) The relationship of stepchild for VA purposes is not affected by the fact that legal custody may have been awarded to some person other than the veteran, as long as the child is, in fact, a member of the veteran's household.

(2) A child who is not (or was not at the time of the veteran's death) actually a member of the household may still qualify as a stepchild if it is shown that he/she is (or was) in the constructive custody of the veteran.

(3) A stepchild relationship once established is not terminated by the child attaining majority or marrying when such relationship is prerequisite for determining entitlement to accrued benefits payable under [38 CFR 3.1001] or PFOP funds payable under [38 CFR 3.1009]. (See pars. 37.21 and 37.25b.)

(4) The stepchild relationship, once established is not automatically terminated by divorce or separation of the veteran and the child's natural parent if the close family ties are not extinguished. For example, if the veteran still provides care for the stepchild, such child can be deemed to be in his/her constructive custody, and the relationship remains intact.

(5) Once a stepchild has been established, affirmative evidence that the relationship can no longer be said to exist must be of record before additional benefits on the child's behalf can be terminated.

b. **Illegitimate Child of Spouse of Veteran.** An illegitimate child of the spouse of a veteran, born either prior to or during their marriage, may be accepted as the veteran's stepchild if the requirement as to membership in the veteran's household is met.

c. **Determination.** A formal finding will be required only for *unfavorable* decisions. The finding will be prepared for [ ] approval [by the Adjudication Officer or designee not below the level of unit chief] in accordance with the format in paragraph 14.34. When the decision is favorable, a notation will be entered in the "Remarks" section of the award that the stepchild is recognized as child of the veteran under [38 CFR 3.57(b).]

10.05 ILLEGITIMATE CHILD

a. **Development.** Proof of legitimacy will not be required for entitlement to gratuitous VA benefits (38 U.S.C. 101(4)). Furthermore, when entitlement may be established as a stepchild, the development indicated in subparagraph (2) of this paragraph will not be required.

(1) **As to the Mother.** When the mother of the child is the purported legal spouse of someone other than the veteran, it will not be necessary to undertake development to obtain evidence of the legality of the purported marriage since the question of relationship of the child is purely factual for resolution by the Adjudication Division; nor is the question of nonaccess of the purported husband material in the absence of evidence on file raising a reasonable doubt as to paternity.

(2) **As to the Father.** Each category of evidence specified in [38 CFR 3.210(b)] to establish proof of relationship of an illegitimate child, as to the father, has equal weight, and more than one type will not be required (par. 7.04). However, if apparently available, every reasonable effort should be made to obtain proof of the veteran's written acknowledgment of the child or of a court adjudication of parentage. In each case, the amount and quality of evidence necessary may vary.

(a) Reputation alone, which may often stem from self-serving statements, should be weighed in conjunction with other evidence. Statements of other persons, including relatives, friends and acquaintances, who know that the veteran orally or by his conduct identified himself as the father of the child would be better evidence than that based on information supplied by the mother. Similarly, when it is shown that the veteran was known in the community as the child's father, and that he failed to avail himself of opportunities to disavow that relationship, the circumstances may serve to establish a tacit acknowledgment.

(b) A certified copy of a public record of birth or church record of baptism will not alone serve to establish the father's relationship unless he is shown as the informant.

(c) When the veteran was named as the child's father on official records, such as welfare rolls or a census report, such evidence may be accepted as proof of relationship if not contraverted, when it is apparent that the veteran had knowledge of the entries.

b. **Determinations.** When a determination of paternity is required under 38 CFR 3.210(b):

(1) If the decision is favorable, a notation that the illegitimate child is recognized as the veteran's child will be entered in the "Remarks" section of the award. Such awards will require the signature of both an adjudicator and an authorizer.

(2) If the decision is unfavorable, the adjudicator will prepare a formal finding for approval by [the Adjudication Officer or designee not below the level of unit chief] in accordance with the format described in paragraph 14.34.

c. **Effect of Changed Criteria.** Running awards to or on behalf of children who were properly accepted on the basis of an illegitimate relationship under criteria then in effect will not be disturbed solely by reason of the adoption of more restrictive criteria.

(1) A redetermination is in order only when a claim is received from or an issue raised by another person whose rights to payments of a VA benefit would be affected.

(2) If a determination is made that the finding of relationship cannot be maintained under the current regulatory requirements, discontinuance of awards of pension, compensation or dependency and indemnity compensation will be subject to the provisions of 38 CFR 3.114(b); that is, effective the first day of the month following the expiration of the 60-day notice of the proposed termination.

SUBCHAPTER II. SCHOOL ATTENDANCE

10.06 ACTION UPON CHILD'S ATTAINMENT OF AGES 13, 16, AND 18

a. **Computer-Generated Letters and Notices.** Child birth segments will be used as the prime basis for the issuance of computer-generated letters, as children are about to reach ages 13 and 16 in DIC cases and those death pension cases identified by child status code 4 (veteran had total service-connected permanent disability at time of death) and/or age 18 for all children. The birth segment for each child will be purged in turn, as the master record is updated when the child has reached age 18. If benefits are subsequently awarded based on school attendance or helplessness, the award authorizing such extended benefits must replace the previously purged birth data but with the school or helpless status code, as appropriate (pars. 15.19b(14) and 15.35b).

(1) **Age 13 Letter.** VA Form 22-8335, Notification of Possible Entitlement to Dependent's Educational Assistance, (pin feed) will be generated for those children of living or deceased veterans, reaching age 13, who are potentially eligible for DEA (Dependents' Educational Assistance). The current VA Pamphlet 22-73-3, explaining this benefit, will be enclosed.

(a) This letter will be mailed to the payee parent, custodian, or guardian so that they may be aware of the educational assistance available, and to bring to their attention the importance of planning a high school curriculum to prepare for a suitable program of higher education or other post-high school training.

(b) A file copy will not be furnished.

(2) **Age 16 Letter.** VA Form 22-8335a, Transmittal [Form for] Information on Chapter 35 Benefits [ ] (original only), computer-generated, will be mailed with [VA Pamphlet 22-73-3] and VA Form 22-5490[, Application for Survivors' and Dependents' Educational Assistance] during the month in which the child potentially eligible for DEA attains age 16. In addition VA Form 21-8934, Reinstated Entitlement Program for Survivors, (original only), computer-generated, will be mailed with VA Form 21-8924, Application for Benefits Under the Provisions of Section [156,] Public Law 97-377.

(3) **Age 18 Letter.** VA Form 21-674c, Request for Approval of School Attendance, will be generated for each child approximately 3 months before the child's 18th birthday. The letter explains the conditions for continued entitlement to compensation, pension, DIC or, if potentially entitled, to dependents' educational benefits beyond the child's 18th birthday. As determined by the individual record data, selective paragraphs will be printed. When there is potential eligibility to DEA benefits, VA Form 22-5490 [ ] and [VA Pamphlet 22-73-3] will be enclosed (see also par. 15.11k.) In DIC cases, VA Form 21-8934 will be mailed with an application, VA Form 21-8924.

NOTE: In death pension cases, the DEA benefits paragraph will be printed based on status code 4 entered in child birth segments to identify potential DEA eligibility based on nonservice-connected death of a parent-veteran who had a total service-connected disability so evaluated at time of death (par. 15.19 b(14)).

(4) **Computer Notices to Regional Office in Lieu of Generated Letters.** (See par. 15.11b for Target letters not written list.) When a letter is not generated because the full requirements for its issuance are not met or because it is a foreign or record purpose account, a computer notice will be referred via Files activity, to the Adjudication Division. The notices will be:

(a) Msg Code 690, CHECK FOR AGE 18 BENEFITS THIS CASE, for preparation and dispatch of FL 21-136 in both live and death cases. When DIC Benefits are involved, VA Form 21-8924 will be dispatched with an appropriate cover letter.

(b) Msg Code 699, CHILD REACHING AGE 13, for preparation and dispatch of FL 22-332.

(5) Special Allowance Under 38 U.S.C. 412(a). See paragraph 40.17.

b. Use of Form Letter or Dictated Letter

(1) General. In these cases in which an age 18 letter is not computer generated, FL 21-136 or 21-863, with appropriate enclosures, will be used (unless a dictated letter or addition to an award letter would be required or more appropriate), as provided below. It will not generally be necessary to prepare a file copy of the form letter. (For foreign cases, see pars. 5.10 b and d.) (See also par. 15.11 c and e.)

(2) VA Form 21-674, Request for Approval of School Attendance. VA Form 21-674 (in duplicate) will be furnished with the form letter (or dictated letter) for completion by the claimant in order to establish school attendance and income information when required.

(a) In every case the claimant will be informed that VA Form 21-674 is to be completed in duplicate, with the claimant retaining the copy, returning the completed and signed original to the VA in accordance with the instructions provided. The reverse side of the retained copy will be used by the claimant for reporting any change in the child's status.

(b) Prior to dispatch, the file number, the name of the veteran and the regional office to which the original is to be returned will be entered in the designated blocks.

(3) Notice of Potential DEA Eligibility. The following action will be taken to assure proper notice of potential eligibility for DEA benefits when a computer-generated letter is not provided. (See also par. 15.11r.)

NOTE: Letters addressed to corporate fiduciaries will be routed through the Veterans Services Division for such action as deemed necessary to accomplish this purpose. A file copy of the form letters specified below will not be required.

(a) **Notice at Age 13.** FL 22-332 will be mailed with [VA Pamphlet 22-73-3.]

(b) **Notice at Age 16.** FL 22-332 will be mailed with [VA Pamphlet 22-73-3] and VA Form 22-5490 during the month in which the potentially eligible child attains age 16.

(c) **Notice at Age 18.** FL 21-136 will be mailed with VA Form 22-5490 and [VA Pamphlet 22-73-3.] (But see subpar. (d) below.)

(d) **Notice After Age 18.** FL 22-331 will be used to notify potential claimants first identified after age 18.

(e) **Notice in Federal Employee's Compensation Cases.** When VA compensation or DIC is not payable because of election to receive FEC benefits (pars. 29.18d and 42.21), future date diaries will be established and maintained to assure notices of potential DEA entitlement are given as provided in the foregoing subparagraphs [.] EXCEPTION: To notify eligible persons reaching age 18, FL 22-331 will be used (instead of VA Form 21-674c or FL 21-136). If any of these letters are returned undelivered because of incorrect address, the current address, will be obtained from the appropriate district office of the Office of Workers' Compensation, Department of Labor.

(4) Notice of Potential REPS (Reinstated Entitlement Program for Survivors) Eligibility. VA Form 21-8924 will be furnished with a dictated letter to DIC recipients when a computer-generated letter is not provided.

(a) **Notice at Age 16.** The surviving spouse will be furnished VA Form 21-8924 when the youngest child attains age 16.

(b) **Notice at Age 18.** Each child will be furnished VA Form 21-8924 when he or she attains age 18.

c. **Original or Reopened Awards.** In these cases, if the child has reached or will reach age 13 or 18 within 2 months at the date of approval and processing of the award, the appropriate notice required in [ ] subparagraph b [above] will be made a part of the notice of award.

d. **VA Form 21-674b, School Attendance Report.** VA Form 21-674b will not be routinely dispatched. The use of this form generally will be restricted to those cases in which verification of school attendance is required in accordance with paragraph 10.07. Before furnishing VA Form 21-674b, the file number, veteran's name, and child's name and regional office to which the form is to be returned will be inserted in the proper blocks.

10.07 ADJUDICATION OF CLAIMS BASED ON SCHOOL ATTENDANCE

Compensation, pension, or DIC may be paid to or for a child between the ages of 18 and 23 years who is in continuous school attendance at an approved school. Continuity of school attendance is not broken by holidays, vacation periods, [or] periods between terms, semesters, quarters, etc.; that is, when attendance is not normally required.

NOTE: Payment of monetary benefits based on an original, reopened, or increased award of compensation, DIC, or pension may not be made for any period before the first day of the calendar month following the month in which the award would otherwise be effective (38 CFR 3.31). "Increased awards" are those adding dependents (i.e., either a new dependent, a previous dependent for whom there has been a break in continuity, or a change in status that affects the benefit amount attributable to the dependent). This provision does not affect the date of entitlement, only the commencement date of payment.

a. **Establishing Periods of Entitlement**

(1) **Age 18 During School Term.** For a child attaining age 18 during a school term, VA Form 21-674 with items appropriately completed to [document] school attendance for the period beginning on or before the 18th birthday will be required [to establish] entitlement [from the 18th birthday.]

(2) **Child Age 18 During Holiday or Vacation Periods.** When a child attains age 18 during a holiday or vacation period and VA Form 21-674 is received for a course which commences at the end of that period with appropriate items completed to show prior attendance, at the same or another school in the same or a different course, to a termination date immediately prior to the holiday or vacation period, no further development as to continuity of attendance will be required. VA Form 21-674 will be accepted as establishing continuous entitlement from the 18th birthday [(38 CFR 3.667(b)).] VA Form 21-674b covering the prior attendance will not be required.

NOTE: The fact that the school offers a summer term does not preclude continuing payment for a child who does not choose to enroll for the summer term PROVIDED this nonattendance will not cause the course to be extended beyond a period commonly accepted as standard. This same proviso will be applied when the school selected operates on a trimester basis and enrollment is deferred for a semester to entrance in the next regular school term.

[ ] VA Form 21-674b will be furnished with the award letter for completion and return to establish actual attendance after the holiday or vacation period and [will] thereby *verify* this continued entitlement. Control will be maintained for necessary actions as provided in subparagraph b below.

(3) **Enrollment in Another Course.** A separate VA Form 21-674 will be required to establish entitlement for each change in course of instruction. Thus, if a claim for continued entitlement is based upon attendance in one course and the child transfers to another course, in the same or a different school, a VA Form 21-674 must be completed for the new course of instruction.

(a) Payments being made on account of approved school attendance will not be interrupted solely because of notice of transfer to another course or school, but will be continued pending receipt of VA Form 21-674 for the change in course and/or school.

(b) The claimant will be informed that this VA Form 21-674 must be completed and returned promptly; otherwise payments therefor will be discontinued. [A pending issue control under end product 130] will be established so that if it is not received within 60 days of the request, action will be taken to adjust the award as of the date of last payment. [(38 CFR 3.667(d))]

(4) **Commencing Dates**

(a) **Child in School at Age 18.** Action will be taken as follows upon timely receipt of evidence establishing the continuity of school attendance. (See also pars. 15.19, 15.28, and 15.35 re entry of reason code 23, Enters School, with change in status code and increase in the School Counter.)

1. **C&P Cases.** (Entitlement] based on school attendance [is effective the date of a child's 18th birthday if a claim is filed timely (38 CFR 3.667(a)(1)).

a. Increased rates of benefits will be paid from the first of the month following the 18th birthday. See paragraph 10.07 for definition of "increased award."

b. Awards to simply continue payment of the previous rate in effect immediately prior to the 18th birthday will commence from the 18th birthday.]

2. **DIC Cases.** [Entitlement based upon school attendance is effective either the first day of the month of a child's 18th birthday or the date of a child's 18th birthday. (See 38 CFR 3.667(a)(3), or (5).)]

a. If a child was included in the surviving spouse's DIC award, the separate award to the child as a school [ ] child will [commence the first day of the month following the month of the child's 18th birthday.]

b. If [a] child was receiving [benefits] as a child, no surviving spouse involved, [the separate award will commence from the child's 18th birthday.

c. If a child was receiving benefits as a child, under an apportioned award, the separate award will commence from the child's 18th birthday continuing the apportioned rate. Effective the first day of the following month the increased school child rate will commence.

NOTE: The retroactive amount of DIC payable to a child (no surviving spouse involved) who had been awarded DIC prior to the 18th birthday and who later reestablishes eligibility because of school attendance shall be the amount equal to the difference between the total of the increased retroactive award(s) for the retroactive period(s) and the prior total award(s).]

(b) **Child Not in School at Age 18.** In cases in which the child was not attending school on the 18th birthday (exclusive of cases covered in subpar. (2) above, when a child reaches age 18 during a holiday or vacation period and, subpar. b below, when schooling is to begin at a future date), [ ] benefits will be awarded effective the first day of the month [following the month] in which school attendance commences [ ], provided [a] claim is [filed] within 1 year from that date. [(38 CFR's 3.31 and 3.667(a)(2) and (4))]

(c) **Not Timely Claimed.** If the claim is not filed within 1 year after the 18th birthday or the commencing date of the course, whichever is later, benefits will not be awarded for any period prior to the [first of the month following the month in which the claim is received. (38 CFR 3.667(a))]

(5) **Prospective Ending Dates.** Awards based on school attendance will provide a reason code 25 award line (see par. 15.35b(1)) for scheduled termination of such benefits as of the first day of the month following the month in which the expected course will be completed [or] the child's 23d birthday [,whichever occurs first. (38 CFR 3.667(c))]

b. **School Attendance To Begin at a Future Date—Use of VA Form 21-674b.** If VA Form 21-674 shows that the child expects to start the next course of training at a future date (or continue schooling following a holiday or vacation), thereby establishing a continuity of school attendance, award action will be taken as provided in subparagraph a above, if otherwise in order, to authorize the benefits payable by reason of such attendance. [Award action can be taken 3 months prior to the childs 18th birthday.]

(1) VA Form 21-674b will be sent with the award notice letter requesting that it be completed and returned within [60] days following commencement of schooling.

(2) The claimant will be further advised that benefits will be reduced or terminated if the form is not received within the [60]-day period.

(3) A [future diary] under end product 130 will be maintained, and if VA Form 21-674b or other notice is not timely furnished following the commencement of school attendance, payments to or on account of the child will be suspended (veteran's or surviving spouse's award [reduced effective date of last payment]). Predetermination due process will be afforded prior to making the final adjustment. Send the beneficiary another VA Form 21-674b with the predetermination notice and control for 65 days.]

(4) If the required notice is not received within the [60-day due process period], or if notice of failure to attend is received, award action will be taken as follows under 38 CFR 3.667(b):

(a) In all cases in which an award to a surviving spouse or a veteran includes additional benefits based on the child's anticipated school attendance, the award will be reduced effective the date of last payment or the first day of the month in which school attendance was scheduled to begin or resume, whichever is earlier. No further control will be maintained.

(b) When payments were being made under a consolidated award, the award will be reduced (dependency codes and rates) to exclude this child, effective as provided in the foregoing subparagraph. Any overpayment to be created will be done in accordance with paragraph 15.08c(1).

(c) If the school child was receiving a separate or an apportioned share, his or her award will be discontinued, effective as provided above. Simultaneously, any other affected award will be adjusted to pay the increased rate payable to other payees by reason of the termination of this child's entitlement. Awards to increase benefits based upon the loss of a dependent are both effective and payable from the factual date of dependency change as the total award amount was reduced to reflect the loss.

10.07.1 VERIFICATION OF SCHOOL ATTENDANCE

We require the custodian of each child (or child if paid direct) in receipt of school attendance benefits to verify continued school attendance at least once each year, by completing VA Form 21-8960, Certification of School Attendance or Termination. [If we do not receive certification of school attendance, benefits payable to or on behalf of the child are to be discontinued.]

a. **Computer Generated VA Form 21-8960.** Every March we will send a computer generated VA Form 21-8960 to each child, or the child's custodian, shown in the master record as attending school. We will also send VA Form 21-8960 to the child or custodian 2 months before a scheduled termination of school attendance except if the termination is in June. The central computer system establishes a master record diary under reason code 21 for the return of VA Form 21-8960 [, or other adequate notice. Other adequate notice is written, factual information provided by the payee or his/her fiduciary or representative with power of attorney showing certification of school attendance or termination of enrollment.]

b. **Completion of VA Form 21-8960.** This form requests the child's custodian (or the child if paid direct) to verify continuous enrollment along with an intent to continue school attendance.

c. **Failure To Complete and Return VA Form 21-8960.** [If the VA Form 21-8960 is not returned within 60 days from the date of request, review the claims folder to determine when it was certified that the child was attending school. Any communication uncontradicted by evidence in file that confirms the student's attendance is acceptable. Establish the effective date of the proposed reduction or termination at the end of the month in which it was last certified that the child was attending school.

d. **Notice of Proposed Action.** Send notice of the proposed reduction or termination, enclose another VA Form 21-8960, and include the following information:

(1) A statement of the proposed decision, including the proposed effective date,

(2) An explanation of the basis for the proposed decision,

(3) The right to present evidence, request a personal hearing, and have representation,

(4) Notice that the beneficiary is to reply within 60 days.

e. **Diary Control.** Establish an EP 600 diary control to mature 65 days following the date the predetermination letter is released.

f. **Failure to Return Subsequent VA Form 21-8960.** If the VA Form 21-8960 or other adequate notice is not received within the additional 65 day period, reduce or terminate benefits as proposed. Send a dictated letter to advise the beneficiary of the final action. Provide a complete explanation and give procedural and appellate rights.

g.] **Receipt of VA Form 21-8960.** If VA Form 21-8960 or other notice is received, PCLR end product code [600], and cancel the master record diary under reason code 21.

[h.] **Unscheduled Termination.** In the event of an earlier unscheduled termination of schooling, take action as follows:

(1) If termination occurs during the regular school year, terminate or reduce the award effective the first day of the month following the month in which school attendance terminated (38 CFR 3.667(c)).

(2) If termination occurs during a regularly scheduled vacation period, amend or terminate the award effective the date of last payment or the first day of the month school was scheduled to resume, whichever is the earlier (38 CFR 3.667(b)).

(3) VA Form 21-674b may be used in questionable cases.

(4) If information is received from someone other than the payee, do not reduce or terminate the award before the expiration of a 60-day predetermination period.

[i.] **Death or Marriage of Child.** For adjustment required in the award to the veteran or surviving spouse upon the death or marriage of a school child, see paragraph 24.16.

10.07.2 AWARDS BASED ON SCHOOL ATTENDANCE AFTER AGE OF MAJORITY

a. **Child Included in Veteran or Surviving Spouse Award.** Payments of compensation or pension on account of a child attending school will continue to be included in the award to the veteran or surviving spouse having actual or constructive custody of the child although the child has attained majority.

b. **Fiduciary Awards.** When the age of majority is later than the age 18 and an award is being made to a fiduciary (including a fiduciary recognized under 38 CFR 3.850(c)) on account of school attendance which will continue beyond the age of majority on behalf of a *competent* child, the award to the fiduciary will authorize payments due through the final date of entitlement (end of approved schooling) or age 23, whichever is earlier. (See also par. 12.04 re controls on awards for children.)

NOTE: Msg 692, CHECK FOR CHILD REACHING MAJORITY, is issued approximately 3 months prior to the 21st birthday (as shown in the child birth segment) of any child for whom payments are being made to a fiduciary. When the date of majority is over age 18 but other than age 21, a control will be established under diary reason 30 for review of the case 60 days prior to the date of majority. (See par. 1.12a(3).)

(1) Upon receipt of Msg 692 (notice of child reaching 21) or Msg 631 (notice of expiration of a diary control), the child's current address will be ascertained and marital status and school attendance verified. FL 21-863 may be used for this purpose. A control will be established for further review *in sufficient time* to prevent receipt of any payment by the fiduciary after the child attains majority. (See par. 1.11.)

[(2)] When the requested evidence is received, action will be taken to authorize direct payment to the child effective the first of the month in which majority was attained, or from date of last payment, if earlier, when such payment will be received on or after attainment of majority 38 CFR 3.403(b) and 3.854. (See also par. 10.10b.)

[(a)] If no other child is being paid under the award to a fiduciary, the 601 screen under CFID authority, will be used to substitute the child as a payee for direct payment of benefits due by reason of majority. The reason for this change will be annotated on the document print. The student will be notified by dictated letter.

NOTE: The Fiduciary File Location field must be completed with entry of "000" to remove the guardianship location (VSO code) so as to prevent unnecessary messages to the VSO: i.e., action messages such as Msg 692, and rejects on changes of address not processed under CFID authority.

[(b)] Reduction in a consolidated award will require award action, using reason code 31 or 43 for the award line reducing payments. The direct payments to the school child will be authorized by original or reopened award, using reason code 00. See paragraph 10.07.3 below, re preparation of awards. Notice to the student will be effected by attachment (e.g., VA Form 21-8737, Children's Death Pension Award, to the FL 21-822a) award letter or by dictated letter. (Also see par. 15.08c re consolidated award adjustment.)

[(3)] If the requested evidence is not received within the control period, payments will be suspended.

[(a)] If the evidence is not received within 6 months, Msg 615, ACCOUNT IN SUSPENSE SIX MONTHS OR MORE, will issue for termination action effective as of date of last payment.

[(b)] Upon receipt of necessary evidence within 6 months of the request, and prior to any termination action, action will be taken as provided above for direct payment; except that, for the only child award, (the 406 screen under the RESU (resume) authority will be used to effect resumption of payments with consecutive 601 screen entries under CFID authority to substitute the student's name and address as direct payee) and to zero-out any existing VSO code by entry of "000" in the Fiduciary File Location field.

[(c)] Upon receipt of necessary evidence following termination but within 1 year of the request, action will be taken by amended or reopened award, as appropriate.

[(4)] If continued entitlement is not established the award will be terminated as of the appropriate date.

[10.07.3] PREPARATION OF AWARDS

Awards involving school attendance will be prepared in accordance with instructions found in chapters 15, 23, and 38 in addition to the specific instructions found below. Particular attention must be given to change reason codes, number of school children, and child birth data. Incorrect entries for these items will result in error messages.

[a.] General. Awards involving school children must provide a reason code 25 (45 in "other" awards or 55 with helpless children attending school) future award line reflecting the end of school attendance. The 304 screen must provide the same remove reason and remove date.

[b.] Examples of the completion of the 403 and 304 screen follow:

[(1)] Retroactive Adjustments

EXAMPLE 1: "Increased Award." On July 2, 1984, a veteran in receipt of compensation at the 30 percent rate notifies the regional office that his only dependent Gail, born May 15, 1966, is attending high school through June 8, 1985.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H Inc	SLC	Withhold	DED-Offset
051584	26	194.00	31	30	81/81	0				
060184	23	213.00			81/81	1				
120184	37	221.00			81/81	1				
070185	25	185.00			00/00	0				

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG Stat	RSN	Remove	RSN	Appor
Gail	051566	2	051584	26	060184	23	070185	25	

EXAMPLE 2: "Continued Award." On July 2, 1984, a veteran in receipt of improved pension without income notifies the regional office his only dependent Jere, born May 15, 1966, is attending school through June 8, 1985.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H Inc	SLC	Withhold	DED-Offset
051584	23	602.00	3L	PT	81/81	1	0000			
120184	37	623.00			81/81	1				
070185	25	475.00			00/00	0				

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG Stat	RSN	Remove	RSN	Appor
Jere	051566	2	051584	23			070185	25	

EXAMPLE 3: Separate DIC award to a child previously included on the spouse's award. On July 2, 1984, Joe born May 15, 1966, notifies the regional office he is attending school through June 8, 1985.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H Inc	SLC	Withhold	DED-Offset
060184	00	118.00	77		81/81	1				
120184	37	122.00			81/81	1				
070185	25	0000.00			81/81	0				

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG Stat	RSN	Remove	RSN	Appor
Joe	051566	2	60184	23			070184	25	

EXAMPLE 4: Separate DIC award to child previously receiving an apportioned award based upon a spouse also in receipt of benefits. Use the same information as example 3.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H	Inc	SLC	Withhold	DED-Offset
051584	60*	72.00	77		81/81	0					
060184	23	118.00			81/81	1					
120184	37	122.00			81/81	1					
070185	25	0000.00			81/81	0					

**00 if original award, previously included on consolidated award*

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG Stat	RSN	Remove	RSN	Appor
Joe	051566	2	051584	26	060184	23	070185	25	

EXAMPLE 5: Separate DIC award no surviving spouse. Use the same information as example 3.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H	Inc	SCL	Withhold	DED-Offset
051584	60*	233.00	77		81/81	1					
120184	37	240.00			81/81	1					
070185	25	0000.00			81/81	0					

**00 if original award, previously included on consolidated award*

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG	Stat	RSN	Remove	RSN	Appor
Joe	051566	2	051584	23				070185	25	

(b) **Future Adjustments**

EXAMPLE 1. "Increased Award." In March 1984, a veteran in receipt of compensation at the 30 percent rate notified the regional office that his only dependent Gail, born May 15, 1966, is attending high school through June 8, 1985.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H	Inc	Withhold	SLC	DED-Offset
051584	00	194.00	31	30	81/81	0					
060184	23	213.00			81/81	1					
120184	37	221.00			81/81	1					
070185	25	185.00			00/00	0					

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG	Stat	RSN	Remove	RSN	Appor
Gail	051566	2			060184		23	070185		25

EXAMPLE 2: "Continued Award." In March 1984, a veteran in receipt of improved pension without income notifies the regional office his only dependent Jere, born May 15, 1966 is attending school through June 8, 1985.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H	Inc	Withhold	SLC	DED-Offset
051584	23	602.00	3L	PT	81/81	1		0000			
120184	37	623.00			81/81	1					
070185	25	475.00			00/00	0					

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG	Stat	RSN	Remove	RSN	Appor
Jere	051566	2			051584		23	070185	25	

EXAMPLE 3: Separate DIC award to a child previously included on the spouse's award. In March 1984, Joe, born May 15, 1966, notifies the regional office he is attending school through June 8, 1985.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H	Inc	SLC	Withhold	DED-Offset
060184	00	118.00	77		81/81	1					
120184	37	122.00			81/81	1					
070185	25	0000.00			81/81	0					

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG Stat	RSN	Remove	RSN	Appor
Joe	051566	2	60184	23			070185	25	

EXAMPLE 4: Separate DIC award to child previously receiving an apportioned award based upon a spouse also in receipt of benefits. Use the same information as example 3.

A. When the child is the only payee.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H	Inc	SLC	Withhold	DED-Offset
051584	00	72.00	77		81/81	0					
060184	23	118.00			81/81	1					
120184	37	122.00			81/81	1					
070185	25	0000.00			81/81	0					

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG Stat	RSN	Remove	RSN	Appor
Joe	051566	2			060184	23	070185	25	

B. When the child is from a consolidated award with more than 1 child.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H	Inc	SLC	Withhold	DED-Offset
051584	00	72.00	77		81/81	0					
060184	23	118.00			81/81	1					
120184	37	122.00			81/81	1					
070185	25	0000.00			81/81	0					

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG Stat	RSN	Remove	RSN	Appor
Joe	051566	2	051584	26	060184	23	070185	25	

EXAMPLE 5: Separate DIC award no surviving spouse. Use the same information as example 3.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H	Inc	SLC	Withhold	DED-Offset
051584	23	223.00	77		81/81	1					
120184	37	240.00			81/81	1					
070185	25	0000.00			81/81	0					

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG Stat	RSN	Remove	RSN	Appor
Joe	051566	2			051584	23	070185	25	

EXAMPLE 6: When there has been a break in the continuity, improved pension cases must show the current award line using special law code 18 and zeroing it out effective the date the child is added whenever there is a future change in IVAP due to the child's income. On July 1, 1984, a veteran in receipt of pension without income reports that his daughter, Julie, will attend college August 15, 1984 through May 29, 1985. She has countable income on $145 per year.

403 Screen

Date	RSN	Rate	EC	Disab	Depen	S	H Inc	SLC	Withhold	DED-Offset
070184	00	459.00	3L	PT	00/00		0000	18		
090184	23	590.00			81/81	1	0145	00		
120184	37	611.00			81/81	1	0145			
060185	25	475.00			00/00	0	0000			

304 Screen

Child Name	Child DOB	Stat	Add	RSN	CHG Stat	RSN	Remove	RSN	Appor
Julie	111965	2	090184	23			070185	25	

10.08 APPROVED COURSE OF INSTRUCTION

a. **General.** Benefits based on school attendance will not be awarded unless the course of instruction or training meets the requirements specified in subparagraph b for domestic cases or subparagraph c for foreign cases. Authority to approve an award based on school attendance includes authority for approving the course of instruction.

b. **Domestic Cases.** The instruction or training must be offered by an institution recognized as standard and accredited for such course:

(1) By the authority established within the State for determining educational standards:

(2) By some institution or State authority recognized by the VA to be equally as competent to determine such standards as such State authority; or

(3) By the Adjudication Division of the regional office of jurisdiction over the area within which the institution is located. (See subpar. e below.)

c. **Foreign Cases**

(1) The instruction or training must be offered either by:

(a) An institution recognized as standard and accredited for such course by the authority established within the country for determining educational standards, such as The Minister of Education, The Minister of Cultural Affairs, etc.; or

(b) An institution recognized by the VA for the purposes of educational assistance under 38 U.S.C. chapter 32, 34, or 35.

(2) In the event there are no recognized accrediting agencies as specified in subparagraph (1) (a) and (b) above, the American Consular Officer is authorized to consult with any recognized institution of higher learning for professional advice concerning the acceptability of the school. The determination of approval status will be made as follows:

(a) The Manila regional office will make the determination as to the acceptability of a course of instruction or training in the Philippines.

(b) [In foreign cases, the determination will be made by the American Consular Officer who will furnish an endorsement as the approving official when VA Form 21-674 is submitted through the local U.S. Embassy or Consulate; otherwise, when the approval status of a foreign school or institution is to be determined, the request will be referred to the Director, Washington regional office (271), who maintains information concerning the approval status of foreign schools. The request may be made by VADATS (VA Data Transmission System) when the circumstances warrant expedited action. A request for status will not be made when the course obviously does not meet the requirements of subparagraph d below.]

d. **In All Cases.** The course should require attendance of not less than the equivalent of three regular class sessions (daytime or evening) per week and contemplate the attainment of the training or educational objectives in a period commonly accepted by standard institutions as adequate for that purpose.

(1) If the school is accredited for VA purposes, and both the total hours spent in class and the educational objective are otherwise acceptable, benefits based on the certified school attendance may be approved locally.

(2) When local approval does not appear warranted, the case may be submitted to Central Office (214D) for an advisory opinion if the contemplated course is otherwise meritorious and appears to be directed toward the attainment of a definite educational objective.

e. **Development for Determination of Approved Course of Instruction**

(1) **Domestic Cases.** Upon receipt of VA Form 21-674, a determination will be made whether the course of instruction meets the criteria for an approved course of instruction. If deemed necessary, an inquiry or investigation will be made before final determination.

(a) As necessary, reference will be made to the list of approved schools maintained in the regional office.

(b) If the school is not on the approved list and the office does not have information about the school from other resource data, such as a recent issue of the U.S. Department of Education's "Education Directory, Part 3, Higher Education" or the "Official Directory" published by the Accrediting Commission for Business Schools, necessary action will be taken to obtain the data from the State authorities or other competent sources.

(c) If the school is located in another jurisdiction and additional information regarding its approved or nonapproved status is desired, such information will be obtained by telephone or VADATS from the office having jurisdiction over the area where the school is located.

1. The request should indicate that the information is being requested for compensation, pension or DIC purposes, whichever is applicable, since the requirements for approved course status in these cases are less stringent than the requirements of training under 38 U.S.C. chapters 32, 34, and 35.

2. When the information is furnished, the *originating office* will determine whether the course of instruction may be approved for the case under consideration. (See subpar. a above.)

(2) **Foreign Cases.** Any development as to the acceptability and approval of a school or a course of instruction or training in foreign cases will be undertaken as provided in subparagraph c above.

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10.09 NONDUPLICATION OF BENEFITS

Compensation, pension or DIC may not be paid based on school attendance if the child is pursuing: [(38 CFR 3.667(f))]

a. A course in a federally supported school, when the child is *wholly* supported at the expense of the Federal government. (The bar in [38 CFR 21.4025] to schooling supported "in part" does not apply against compensation, pension, and DIC cases.) "Wholly supported" means that the student is furnished tuition, housing, meals, suitable clothing, medical attention, books, supplies and other necessities at the expense of the Government. In addition to the service academies, this includes the United States Merchant Marine Academy and Indian Schools wholly supported by the Federal government where no charge is made for tuition or maintenance.

b. A course under the Dependents' Educational Assistance program when the child is over age 18 and is not helpless. (See pars. 10.14 and 10.15.)

NOTE: Compensation, pension, or DIC based on the service of a parent may be paid concurrently with educational or vocational rehabilitation benefits based on the child's own service. (But see [38 CFR 3.708,] Federal Employees' Compensation, and ch. 29, subch. IV, and ch. 42, subchs. IV and V.) Also, payment of Social Security benefits because of school attendance is not a bar to concurrent compensation or pension or DIC based on the same school attendance.

10.10 DEPENDENCY AND INDEMNITY COMPENSATION

a. **Need for Claim.** VA Form 21-674 will be accepted as the evidence required by [38 CFR 3.152(c)(4)] to complete a claim for a child who was included in the surviving spouse's claim and becomes eligible for DIC upon attaining age 18. VA Form 21-4183, Application for Dependency and Indemnity Compensation by Child, should be required only when the information to be supplied thereon will be necessary for proper adjudication.

b. **Separate Payment to Child Over Age 18.** Payments of DIC to a child over 18 years of age by reason of school attendance (or helplessness) will be made to or for the child under an additional (separate) award, even though the child may be in the custody of a surviving spouse in receipt of DIC benefits and such benefits and such additional award is made to the surviving spouse as custodian under [38 CFR 3.850(c).] Direct payment to such child during minority will be made only under the conditions prescribed in [38 CFR 3.850(a).] (See also par. 10.07a(4)(a) [and e.)]

SUBCHAPTER III. DEPENDENTS' EDUCATIONAL ASSISTANCE AND SPECIAL RESTORATIVE TRAINING

10.11 TRANSMITTAL OF INFORMATION CONCERNING DEPENDENTS' EDUCATIONAL ASSISTANCE

a. **General.** Chapter 35, title 38, United States Code, provides an educational assistance program to the children, spouses and surviving spouses of veterans who fall in one of the following categories: (See also [38 CFR 3.807 and 21.3021.])

(1) Who died in service in line of duty; or

(2) Who were discharged from service under conditions other than dishonorable, *and;*

(a) Who have permanent and total service-connected disability (rated at 100 percent schedular or by reason of individual unemployability); or

(b) Who had a total service-connected disability, permanent in nature in existence at death (rated at 100 percent schedular or by reason of individual unemployability); or

NOTE: For DEA purposes only, when a totally disabled veteran dies and permanency has not yet been established and the cause of death is not service-connected, permanency will be conceded to establish DEA entitlement. (But see par. 56.18c re need for rating.)

(c) Who died as a result of a service-connected disability; or

(3) Who were on active duty as members of the Armed Forces who are now and for a period of more than 90 days have been listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force or forcibly detained or interned in line of duty by a foreign government or power.

b. **Notice of Potential Entitlement**

(1) **Children.** When DEA benefits may be payable notice of potential eligibility will be furnished as provided in paragraph 10.06 re entry of status code 4 in child data segment for computer identification of children in pension cases having DEA eligibility based on parent veteran's permanent and total service-connected disability at time of nonservice-connected death.)

(2) **Surviving Spouses and Spouses.** In DIC (and death compensation) cases, the standard attachments, VA Forms 21-6753 [,Original or Amended Dependency and Indemnity Compensation Award,] and 21-6771 [, Death Compensation Award,] provide information as to DEA eligibility and entitlement. In disability compensation cases, attachment VA Form 21-8760 [, Additional Information for Veterans With Service-Connected Permanent and Total Disability,] must be furnished (together with the standard attachment appropriate for the award) when the award is to a veteran with the prerequisite service-connected permanent and total disability. This information will be included in dictated letters whenever the standard attachment is not used.

(3) **Death Pension Cases.** When DEA eligibility will be based on the existence of service-connected total and permanent disability at time of death, special notice as to this eligibility must be directed by the adjudicator for inclusion on the attachment VA Form 21-6895 or 21-8737, or furnished by dictated letter.

NOTE: Disability compensation or DIC awarded under 38 U.S.C. 351 does not establish eligibility to DEA benefits. [(38 CFR 3.807(c))]

10.12 INITIAL ACTION—DETERMINATION OF ELIGIBILITY

The initial processing of VA Form 22-5490, [ ] will be by the regional office having jurisdiction of the claims file of the veteran-parent (hereinafter referred to as the "parent-folder"). Applications will be received in the Adjudication Division with the parent-folder for determinations of basic eligibility and entitlement as provided herein and in DVB Manual M22-2, part II.

[ ]

10.13 DETERMINATION OF QUALIFYING SERVICE-CONNECTED DISABILITY OR DEATH

a. Determination as to basic eligibility under 38 U.S.C. ch. 35 will generally be included in formal rating decisions for disability or death claims. However, when this issue has not been disposed of by any rating decisions in file, the case will be referred for memorandum rating. (See par. 47.14.)

b. In disability cases, because of the requirement of permanency of disability, in the absence of a specific rating determination of eligibility for chapter 35 benefits (par. 46.08d), submission to the rating board for a memorandum rating will be required except when there is no requirement for a future examination.

10.14 INTERIM ENTITLEMENT TO COMPENSATION, PENSION, OR DIC

a. **Award Action Based on VA Form 22-5490 Without VA Form 21-674.** If the eligible person was attending school at the end of the preceding term and VA Form 22-5490, or notation on the copy of the DEA award form referred to the parent-folder shows that school attendance under 38 U.S.C. ch. 35 commenced at the next term, the requirement of continuity of school attendance to the end of a holiday or vacation period or during the period between terms will be considered as having been met. No additional evidence of school attendance will be required (see par. 10.07a(2)).

(1) Compensation, pension or DIC will [redacted] be awarded if otherwise in order, covering the interim period without requiring execution of VA Form 21-674 (par. 10.15).

(2) Otherwise, such benefit will not be awarded covering any period of school attendance prior to attendance under 38 U.S.C. ch. 35 unless VA Form 21-674 is received establishing continuous approved school attendance.

(3) If completion and return of VA Form 21-674 is required to establish such additional entitlement, this development will be undertaken simultaneously with processing of the applicaton for educational assistance.

b. **Notice of Status Changes Prior to DEA Award.** The proper adjudication of claims for 38 U.S.C. ch. 35 benefits requires constant awareness of any changes which may affect entitlement to that benefit. When the parent-folder jurisdiction is in another regional office, notification of any compensation, pension, or DIC award or adverse rating will be furnished the office having jurisdiction of the DEA folder. This will usually be effected by referral of an extra copy of the award (par. 15.07a).

10.15 ADJUSTMENT OF COMPENSATION, DIC, AND PENSION AWARDS

a. **Reduction or Discontinuance of Award.** Upon authorizing an award of 38 U.S.C. ch. 35 benefits or upon notice from another office of DEA jurisdiction that such an award will be authorized the following action will be taken:

(1) **Child Over Age 18.** Awards of disability or death compensation or pension or DIC, in the same or any other case, in which the payments authorized were based on the school attendance of a child, will be reduced or discontinued, either retroactively or prospectively, using reason code 41, effective the commencing date of the award of benefits to that child under 38 U.S.C. ch. 35, as provided by [38 CFR 3.503(h)] unless, under the provisions of [38 CFR 3.500(b)(2)] termination may be effected as of DLP due to administrative error (see par. 14.35b(1)). (See also par. 15.08c(1) re adjustment when child was receiving benefits under a consolidated award.)

NOTE: Any overpayment created will be recovered from the payee authorized compensation, pension, DIC, or death compensation based upon the child's school attendance beyond the age of 18. However, an overpayment created in an award to or for the child [will] be recouped from the initial payment on the 38 U.S.C. ch. 35 award by the Finance activity of the office having jurisdiction over the DEA folder.

(a) **DEA Folder in the Same Office.** When jurisdiction over the DEA folder and the parent-folder is in the same office, simultaneous review will be required.

(b) **DEA Folder in Another Regional Office.** Upon receipt of telephonic notice that a chapter 35 award is to be prepared in another regional office, the following information will be exchanged.

1. Type of benefit being paid.

2. Station of jurisdiction.

3. VA file number (including prefix).

4. Name of person entitled.

5. Payee number.

6. Name of child electing chapter 35 benefits.

7. Monthly rate(s) and date(s) of benefits to or for the child.

8. Effective date of reduction or discontinuance.

9. Processing date, actual or expected, for reduction or discontinuance action.

10. Effective date of child's chapter 35 award.

(2) **Child Under Age 18 or Helpless.** A child who is under the age of 18 years, or over 18 if entitled because of permanent incapacity, may receive death compensation, pension or DIC concurrently with benefits under 38 U.S.C. ch. 35, in the same case or in another case based on the death of more than one parent in the same parental line, if both such parents died before June 9, 1960.

(a) No adjustment will be required because of chapter 35 eligibility for any period prior to the 18th birthday or while permanently incapacitated. (See subpar. c below and par. 10.17.)

(b) However, if one such parent died on or after June 9, 1960, adjustment will be required as provided in subparagraph (1) above, in the award in any other case based on service of a parent in the same parental line. (Also see par. 42.23.)

b. **Other Payees.** If there are other payees entitled to an increase by reason of discontinuance of disability or death compensation or pension or DIC for a beneficiary who has elected dependents' educational assistance, the increased rates will be allowed from the effective date of the discontinuance of compensation, pension or DIC entitlement of the eligible person. [38 CFR 3.651, 3.703(c) and 3.704(a)]

NOTE: A child (not [helpless]) over age 18, in the same or another case, who received DEA benefits either prior to or subsequent to his/her 18th birthday, will be excluded from consideration as a dependent in a pension claim in determining if the claimant should be considered a surviving spouse with or without a child as to the applicable income limitation as well as the rates payable.

c. **Periods Preceding Commencement of Attendance Under Dependents' Educational Assistance Program.** When it is determined that a beneficiary will receive assistance allowance, the claims folder will be examined to determine whether additional compensation or DIC is payable for any period preceding the effective date of chapter 35 eligibility.

(1) If the eligible person was attending school at the end of the preceding term, and VA Form 22-5490 or 22-1997 series show that commencement of school attendance began under the DEA program in the month in which the next term would normally commence, no additional evidence of school attendance will be required.

(2) Compensation, pension, or DIC may be awarded covering a vacation period without requiring completion of VA Form 21-674 when requirements of subparagraph (1) are met. Otherwise, benefits will not be awarded covering a vacation period prior to attendance under the DEA program unless VA Form 21-674 has been filed establishing continuous school attendance.

NOTE: When the prior school attendance is shown on VA Form 22-5490 and the claims folder is under the jurisdiction of another office, a notation of the school attendance at the end of the preceding term will be entered on the referral copy of VA Form 22-1997 series prior to referral to the office of claims folder jurisdiction.

d. **Notice To Be Furnished Payee.** Notice of the action taken and the reason will be furnished the payee. It will not be necessary to include notice of the right of appeal.

e. **Copies of Award Actions.** In all cases in which amend or discontinuance action is taken as the result of election of chapter 35 benefits, a copy of the award or discontinuance action will be made for the DEA folder and referred to the office of jurisdiction when applicable.

10.16 FINALITY OF ELECTION

a. When a claim for disability or death benefits or a request for resumption of payments of such benefits for an eligible child over *18 years of age based on school attendance* is received after a certification of basic eligibility has been issued or an award of benefits has been made under 38 U.S.C. ch. 35, award action must be withheld pending verification that payment for any period covered by such award has not been made under that chapter.

NOTE: There is no bar to concurrent payment of DEA benefits to a child under age 18, a helpless child or to a spouse or surviving spouse.

(1) When the DEA folder is located in another regional office, this will be accomplished by a letter of request, or by [VADATS] or FTS if conditions warrant, to the Adjudication Division of the regional office having jurisdiction over the DEA folder.

(2) If there is no notation of current jurisdiction of the DEA folder [ ] indicated in the claims folder, an inquiry as to the office of jurisdiction will be made through BIRLS. If BIRLS has no record, the request will be addressed to the office to which the VA Form 22-5490 was referred.

b. If a payment has been made under 38 U.S.C. ch. 35, the election of benefits will be considered final and the application for disability or death benefits for the same periods will be disallowed. [38 CFR 21.3023(c)(1))]

c. If no payment has been made, disability or death benefits may be allowed, subject to other conditions of entitlement. (See par. 10.14.)

10.17 CHILDREN PERMANENTLY INCAPABLE OF SELF-SUPPORT ATTENDING SCHOOL

Upon authorization of benefits under 38 U.S.C. ch. 35 to or for an eligible person who is receiving compensation or pension or DIC as a child permanently incapable of self-support, a computer future (reason 03) control will be established for review of the claims folder 6 months after the ending date of the award of educational assistance benefits. The award of compensation or pension or DIC will not be discontinued in such cases.

a. If, before the control date, an award is made to extend the educational assistance benefits to a later date, the control will be advanced for 6 months from the later date. The office having custody of the DEA folder, if other than the office of claims folder jurisdiction, will flash the DEA folder to insure notification to that office, at any future date, of the completion of the educational program for which the allowance was paid in order that a determination may be made as to whether permanent incapacity for self-support has ceased.

b. Upon completion of the course, the claims and the DEA folder will be referred to the rating board for redetermination of permanent incapacity for self-support.

c. If the rating board finds the incapacity no longer exists action will be taken to terminate the helpless child benefit, effective the date of last payment in pension cases or, the first of the month following the expiration of 60 days notice of the proposed action in compensation and DIC cases ([38 CFR 3.503(c)])

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CHAPTER 11. PERMANENT INCAPACITY FOR SELF-SUPPORT

11.01 CLAIM

Any communication or evidence indicating or claiming permanent incapacity for self-support of a child of a veteran will be considered as a claim under 38 CFR 3.315(a). Use of particular VA forms will be required only to the extent the information is necessary for proper adjudication and not of record.

11.02 INITIAL DEVELOPMENT

a. **Substantiating Evidence.** When the incapacity of a child is alleged and substantiating evidence has not been received, the claimant will be requested to submit statements of medical or psychiatric examination and of persons having knowledge of the facts, such as teachers, tutors or social workers who have observed the child's condition or from institutions where the child may have been maintained. The statements should describe the child's condition in the detail specified below as of age 18:

(1) **Extent of Disablement.** The extent to which the child was then physically or mentally deficient, such as the ability of the child to perform self-care functions and the ordinary duties required of a child of that age; whether the child attended school and the maximum grade attained; whether any material improvement in the child's condition has occurred; whether the child has ever been employed and, if so, the nature and dates of such employment and the remuneration received; whether the child has ever married; and present condition.

(2) **Personal Observation Desired.** All statements should indicate the basis of the knowledge of the facts reported. They should not merely relate the statements of others but should give detailed statements of facts known to them personally in regard to the child's mental and physical condition when the age of 18 years was attained and of the child's present condition.

b. **Action if Not Received in 60 Days.** The claimant will be informed that the requested evidence should be submitted within 60 days from the date of the request.

(1) If, at the expiration of that period, no reply has been received the adjudicator or authorizer will refer the case to the rating board to determine if a decision can be rendered on evidence of record or if it establishes a reasonable probability of a valid claim which would warrant request for VA examination.

[(2) No further development will be undertaken unless it is requested by the rating board. Annotation will be made that previously requested evidence has not been received. The notation will be signed and dated by the Adjudicator. The claim will be disallowed under reason code 16, Failure to Prosecute. Notify the claimant of the disallowance and provide notice of procedural and appellate rights. (See par. 16.03.)]

11.03 ACTION UPON RECEIPT OF EVIDENCE SHOWING INCAPACITY

a. **Referral to Rating Board.** When evidence is received which tends to show permanent incapacity for self-support, the claim will be referred to the rating board for a decision as to whether the child was so incapacitated at the delimiting age and whether such condition currently exists.

b. **Timeliness of Evidence.** Evidence will not be requested or referred to the rating board earlier than 3 months prior to the child's 18th birthday. If evidence is received at an earlier date, the claimant will be informed that consideration will be deferred.

(1) The case will be diaried for referral to the rating board approximately 3 months prior to the child's 18th birthday.

(2) If at that time the child's disability is considered permanent in nature on the basis of evidence of record, the board may order an examination without requiring a current statement of a physician who has examined the child within 3 months of the 18th birthday (or other suitable evidence).

c. **Action by Rating Board.** In any claim submitted to the rating board for a determination under the criteria in [38 CFR 3.356], consideration will be given to:

(1) Whether the evidence establishes prima facie entitlement at the statutory age and continuation of the condition currently existing, or

(2) Whether the evidence of record is sufficient to render a decision either to allow or disallow. If a physical examination and/or a social and industrial survey or other development is required, it will be directed by the rating board.

NOTE: A VA examination need not be routinely required. The question of permanent incapacity is one of fact for determination by the board, on competent evidence of record which may consist of a private physician's statement and/or examinations or hospital report. It is only when such evidence is insufficient that a VA examination may be necessary.

11.04 ALLOWANCE OF BENEFITS

a. **Disability Compensation.** If the veteran qualifies for additional compensation on behalf of dependents, additional allowance for a child permanently incapable of self-support will be added to the veteran's award. An ending date will not be put on the amount being paid by reason of the child. An apportionment for such child will be handled in the same manner as for a minor child, except no termination date is employed. Establishment of the existence of a child permanently incapable of self-support precludes termination under [38 CFR 3.557] of an incompetent veteran's benefits by reason of estate being over $1,500.

b. **Disability Pension.** A child permanently incapable of self-support is a dependent in "old law" pension cases which, when the child is the sole dependent, increases a veteran's statutory income limitation and, in current law cases may increase monthly payments. It also precludes reduction of pension due to hospitalization and, in incompetency cases, termination under [38 CFR 3.557] by reason of estate being over $1,500.

c. **Death Compensation or Pension.** When the widow(er) is receiving death compensation or pension and an additional allowance is found to be payable for a child permanently incapable of self-support who is in the widow(er)'s custody, the additional amount will be added to the widow(er)'s award.

d. **Dependency and Indemnity Compensation.** Payments of dependency and indemnity compensation to children over 18 years of age by reason of permanent incapacity for self-support will be made by separate award to or for the child in their own right, even though the widow(er) may be receiving dependency and indemnity compensation benefits in their own right and have custody of the child.

e. **Preparation and Notice of Award.** See paragraphs 12.02 re awards to or for helpless children; 15.26 and 15.27 re child data entries; 15.31j re notice of award; and 23.06 and 38.04 re dependency codes.

11.05 DISALLOWANCE OF BENEFITS

The claimant will be notified of the disallowance action, the reason therefor and of the right to appeal. (See par. 16.05 re need for and preparation of VA Form 21-523.)

11.06 REEXAMINATIONS

a. **General.** Following a determination of permanent incapability of self-support, reexaminations will be requested only in the most unusual circumstances and, if required, must be fully justified in the rating decision.

b.] **Future Medical Examinations.** When a determination has been made [finding the child to be helpless but] there is a reasonable possibility that the child may become capable of self-support [in the future, (for example upon completion of a course of instruction (par. 10.17)),] the rating board in its decision will request reexamination, social service survey, or [other development] at the expiration of not more than 2 years.

[(1) A master record future data control will be established by use of VA Form 21-6880, Future Control Code Sheet or award entry, using reason code 03.

(2) Upon expiration of the control,] the case will be referred to the rating board for decision as to whether the examination should be made as scheduled, [or the case referred to authorization for further development of the child's current status.]

11.07 MARRIAGE OF CHILD PERMANENTLY INCAPABLE OF SELF-SUPPORT

[a.] Marriage of a child terminates entitlement except as to an award [to a child of a Spanish-American or Indian War veteran] approved under the laws in effect prior to April 1, 1944, in which the marriage merely creates a presumption that the child is no longer permanently incapacitated. Positive proof of continuing incapacity will overcome that presumption. [(VAR 1950)]

[b. When a notice of marriage of a helpless child is received (subject to the exception in the foregoing subparagraph), an award to or for such child will be terminated as of the 1st day of the month in which the event occurred using reason code 54, without reference to the rating board. (See par. 39.02 re termination and action on other children's awards and par. 24.16 re end-of-year adjustment under VAR 1500(N)(2) of the primary (veteran or widow/er) award in cases of marriage or death of a dependent.)

c. When the marriage of a helpless child is judically determined void or is annulled by a court of competent jurisdiction or, if the marriage was terminated on or after January 1, 1975 by death or divorce, helpless child status may be restored if the criteria of VAR 1356 is determined to have continued through the duration of the marriage to the present and is expected to continue in the future.

d. Development required under subparagraphs a and b will be undertaken as provided in paragraph 11.02.]

11.08 RESTORATION TO COMPETENCY

When [certification by the Veterans Services Officer or other evidence is received] showing that a beneficiary [ ] formerly adjudged incompetent has been held [by a court of jurisdiction] to be competent, [the case will be referred to the rating board for consideration of the issue of continued incapacity for self-support (par. 11.11) (See also par. 12.15 re direct payment.)]

11.09 TERMINATION OF WIDOW[(ER)]'S ENTITLEMENT

In any case in which an award of death compensation or pension to a widow[(er)] which includes a child permanently incapable of self-support is discontinued because of termination of the widow[(er)]'s entitlement, the file will be referred to the rating board for consideration of the child's competency prior to the allowance of benefits to or for the child in his[/her] own right [if the helplessness was based in whole or in part upon mental impairment or there is otherwise some indication thereof. (See also par. 39.01, 39.05, 39.08 and 39.11 re action on termination of widow(er)'s award.)]

11.10 COMPLETION OF SPECIAL RESTORATIVE TRAINING

When a child receiving benefits on the basis of permanent incapacity for self-support completes special restorative training under 38 U.S.C. 1161, the procedure outlined in paragraph 10.17 will be followed.

[ ]

11.11 [TERMINATION OF BENEFITS WHEN CHILD IS NO LONGER HELPLESS

NOTE: There is no protection under 38 U.S.C. 110 by reason of a rating of permanent incapacity for self-support in existence for 20 years or more.

a. If information is received that the child has obtained employment or otherwise regained capacity for self-support, development will be undertaken to determine the facts, e.g., nature of employment and income and whether the employment is full time, permanent, temporary or as a method of therapy, etc. The case will be controlled by 60 day local diary.

(1) Evidence received will be referred to the rating board for determination of the issue of continued incapacity for self-support.

(2) Failure to furnish evidence as requested will require termination of benefits as of date of last payment.

b. If it is determined by rating action that a child is no longer helpless, amended award or stop pay action will be taken to discontinue dependency of such child under VAR 1503(C) as of:

(1) Date of last payment, in pension cases, or

(2) Last day of month following 60 days after notice to the payee in compensation and DIC cases.

c. Care will be exercised when terminating helpless child status to determine whether the child may be enrolled in school and so qualify as a school child. (See also par. 10.17 re child receiving DEA)]

[ ]

CHAPTER 12. FIDUCIARY RELATIONSHIP

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CHAPTER 12. FIDUCIARY RELATIONSHIP

12.01 PREPARATION OF VA FORM 21-592

a. **When Initiated.** [Prepare] VA Form 21-592, Request for Appointment of a Fiduciary, Custodian or Guardian, [ ] when payments are to be made on behalf of a person who is mentally incompetent or a minor, or to a duly recognized fiduciary ([38 CFR 3.850(a)] and par. 12.05), except when:

(1) A parent is recognized as custodian of a child by the Adjudication Division under the authority provided by [38 CFR 3.850(e)]. (See par. 12.16.)

(2) An institutional award is in order for an incompetent veteran, without a spouse, child or fiduciary, who is hospitalized by the VA.

[ ]

NOTE: VA Form 21-592 will be prepared to request certification of fiduciary for VA insurance proceeds purposes notwithstanding the existence of a payee or potential payee not otherwise requiring VSO [(Veterans Services Offices)]certification (par. 30.09d).

b. **Number of Copies.** [Prepare VA Form 21-592 in duplicate. Refer the original to the VSO and file the copy in the claims folder.]

c. **Information To Be Furnished.** [Furnish] all available and pertinent information [ ] as to the type of benefits payable and accrued, including amounts in PFOP (personal funds of patients) or FDIB (funds due incompetent beneficiaries), if known, the period of service (World War I, World War II, etc.) of the veteran, the name and address of the nearest relative, and address of the person or institution having custody of the beneficiary.

(1) If a stepparent or adoptive parent is involved, [show] his/her full name, address and relationship. [ ]

(2) [Show] the monthly rate (and effective date) which will be payable on behalf of the beneficiary [ ] in the space provided.

(3) If there are two or more children entitled to equal shares, [show] only the total monthly payment for all children (and effective date). [ ] When, however, as in awards of dependency and indemnity compensation, the total amount payable for all the children will not be equally divided among them, [show] the individual entitlements. [ ]

(4) If a direct deposit account exists, [state] the name and address of the financial institution and account number [ ] in the "Remarks" section of VA Form 21-592.

d. **Routing**

(1) **Residence Within the United States.** [ ] If the minor or incompetent beneficiary is residing in the United States, [send] VA Form 21-592 [ ] to the VSO of the regional office having jurisdiction of the territory in which the beneficiary resides, except that:

(a) If the beneficiary other than a veteran is in a mental institution, [send] VA Form 21-592 [ ] to the VSO of the regional office having jurisdiction of the territory in which the institution is located.

(b) If a court-appointed fiduciary is functioning, [send] VA Form 21-592 [ ] to the VSO of the regional office having jurisdiction of the court of appointment.

(2) **All Other Residences.** If the minor or incompetent beneficiary is residing [ ] outside the continental limits of the United States, VA Form 21-592 will be addressed as follows:

Residence	Addressed To: Veterans Services Officer
[ ]	
Canal Zone, foreign countries or other insular and territorial possessions of the United States (other than those named below)	WRO, Washington, D.C.
Hawaii, American Samoa, Mariana Islands, Midway and Wake	VARO, Honolulu
Mexico	VARO, Houston
Puerto Rico and Virgin Islands	VAM&ROC, San Juan
Philippine Republic	VARO, Manila

e. **Controls.** Periods for controls on action by VSO on VA Form 21-592 and followup procedures will be established in accordance with local experience.

[ ]

12.02 AWARDS FOR MINORS OR INCOMPETENTS

a. **Preparation of Awards**

(1) **Fiduciary-Payee Recognized by VSO.** When the VSO has furnished a certificate relative to the legal capacity of a fiduciary-payee to receive and disburse benefits:

[(a) Show] the name and address of the fiduciary-payee, legend and the name of the beneficiary [ ] as they appear in the VSO's certification.

[(b) Enter the fiduciary file location on the 102 or 601 screen as appropriate.

(c) Prepare] the award [ ] with the following statement included [as "remarks":] "Fiduciary-payee certified by VSO *(regional office)*."

(2) **Custodian Recognized Under [38 CFR 3.850(c)].** See paragraph 12.16c.

b. **Copies for VSO.** A copy (photocopy or print of screen 403) for] awards made pursuant to certification by the VSO (including supervised direct payment cases) will be [referred to the certifying VSO.]

c. **Consolidated Awards for Children.** See paragraph 15.08.

12.03 SUFFICIENCY OF COURT DOCUMENTS

a. **Need for Certification by VSO.** When a court appoints a fiduciary for a minor or incompetent claimant, payments will not be awarded to the fiduciary unless VA Form 27-555, Certificate of Legal Capacity to Receive and Disburse Benefits, is received from the VSO.

b. **Disposition of Court Documents.** When court documents are received from anyone other than the VSO indicating the appointment of a fiduciary, the documents will be forwarded to the proper VSO for review and recognition or appointment of a fiduciary, if necessary. The VSO will retain the documents.

12.04 CONTROLS ON AWARDS FOR CHILDREN

Determinations as to minority status and propriety of direct payment in awards to children will be governed by State law as to age of attainment of majority and [38 CFR 3.850]. When an award is made through a fiduciary during a child's minority, an appropriate control will be established for timely action prior to the date of attainment of majority, as provided in this paragraph. When payment of benefits will be received by a child on or after attainment of majority, the award will include benefits for any retroactive period [38 CFR 3.403(b)]

NOTE: Automatic computer control is established on awards to children (when the master record contains a [fiduciary file location)] for the generation of a notice under Message Code 692, Check for Child Reaching Majority, 2 months before the month of the child's 21st birthday. Accordingly, special control need not be established by the adjudicator unless notice will be required at an earlier date. In such cases, computer controls will be established as provided in paragraph 1.12.

a. **Mentally Incompetent Child.** When an award is made to a fiduciary pursuant to certification by the VSO for a child who has been rated mentally incompetent, it will be prepared as an open-end award. A control will be required for review 6 months prior to the date of attainment of majority. Request for the appointment of a fiduciary for the child as a mentally incompetent *adult* will be sent to the VSO on the expiration of the control date.

b. **Physically Incapacitated Child.** When an award is being made to a fiduciary, including those recognized under [38 CFR 3.850(c)], for a physically incapacitated child by reason of minority only, a control will be required for 3 months prior to the date of attainment of the child's majority, for action to provide for direct payments to such child upon ascertaining his/her address. (See [38 CFR 3.854].)

c. **Child Attending School.** When an award, by reason of minority only, is being made to a fiduciary or a parent custodian for a child over age 18 attending school, a control will be required for review not less than 60 days prior to the date of attainment of majority for action to provide direct payment to the child upon ascertaining marital status and verification of continued schooling. The direct payment award, if in order, will be made effective the first of the month of majority, or DLP, whichever is the later. (See also par. 10.07d.)

d. **Change In Law As to Age of Majority.** When payments are being made through a fiduciary only because of the minority status of a child or children and, following a request by the custodian or child, it is determined that pursuant to a statutory change in age of attainment of majority, direct payment is in order, the adjudicator will initiate the change of payee by screen 601, change of name and address notice, to a separate award or by award action in the case of one of two or more children under a consolidated award (par. 15.08).

(1) If payments are being made through a court-appointed fiduciary, requests for such direct payment will be referred to the VSO prior to effecting any change in the award.

(2) When award action is required, the change to direct payment will be made effective as of date of last payment.

NOTE: The VSO will routinely identify beneficiaries affected when there is an enactment of law lowering the age of majority for accounts under his/her jurisdiction. If payment is being made by a separate award, the VSO will prepare and refer VA Form 20-6566 to the Adjudication Division for approval and processing (par. 17.18).

e. Elimination of [Fiduciary File Location]. When an award being made to a fiduciary is changed to provide direct payment (by amend or change of payee name/address) the [fiduciary file location] must be zeroed out.

12.05 PROCEDURE UPON RECEIPT OF EVIDENCE OF INCOMPETENCY

a. General

Direct payments to a beneficiary will *not* be routinely suspended pending development of an issue of incompetency or certification of a fiduciary. However, when evidence indicates a beneficiary is not receiving or is being deprived of the full benefits being paid, payments may be suspended and the VSO requested to provide expedited certification of a fiduciary. If entitlement to benefits has been established but no payment has been made [or if increased benefits are payable], a determination will be made upon the facts in each case as to whether benefits should be paid directly pending VSO certification.

(1) **Notice of Judicial Determination of Incompetency.** Upon receipt of evidence of a court decree of incompetency or of court appointment of a fiduciary by reason of incompetency of a veteran or other beneficiary, the following actions will be taken:

(a) [Furnish] complete information [to] the VSO as provided herein by VA Form 21-592 action if not previously furnished; otherwise, [furnish information] by memorandum or letter.

(b) [Include] letters of appointment of fiduciary or copy of the decree of incompetency [ ] in the referral to the VSO in accordance with paragraph 12.03b.

NOTE: In the absence of medical evidence, the court appointment of a fiduciary which does not include a judicial declaration of incompetency will not be considered to be evidence of incompetence requiring rating action. However, [prepare] VA Form 21-592 [ ] in accordance with paragraph 12.05a(1) and [refer it] to the VSO in the area in which the beneficiary resides. [Take] action to award benefits to the payee certified by the VSO [ ] upon receipt of VA Form 27-555. Rating action will be required if the VSO findings place competency in issue.

(2) Veteran Beneficiary

(a) When a veteran, for whom a judicial determination of incompetency has been made, has been admitted to a hospital for treatment or observation, necessary evidence including a complete report from the institution fully sufficient for a rating on competency will be requested concurrently with referral to the VSO.

(b) [Initiate] referral to the VSO [ ] prior to submission of the case to the rating board, as the court appointment of a fiduciary by reason of incompetency or the decree of incompetency constitutes a court adjudication of incompetency (par. 14.37b.

(c) Upon receipt of the VSO's report of findings and certification, [refer] the case [ ] for formal rating (par. 54.01d) and award action on the basis of the VSO certification. (See also par. 28.05 re notice of change in status to the Insurance activity.)

(d) Pending certification of a payee or other instruction from the VSO, existing apportionments may continue. (But see par. 12.10 when more than one court-appointed fiduciary has been appointed.) However, [suspend] payments being made under [38 CFR 13.57] to the spouse of a veteran *already rated incompetent* [ ] if a fiduciary other than the spouse-payee has been appointed.

NOTE:] When the veteran has a spouse or child, or is [in a non-VA institution,] see paragraph 28.07b [re simultaneous institutional award [ ] action, and paragraph 28.08 re immediate payment to dependents.

(3) **Child Beneficiary.** Need for rating board action will be determined in accordance with the provisions of paragraph 11.03. Unless requested by the VSO, payments being made on behalf of a child [ ] will *not* be suspended. [ ]

[(4) **Parent or Widow(er) Beneficiary.** Rating action is not required as to a parent or widow(er) payee judicially determined incompetent. Direct payment will continue pending receipt of the VSO certification of fiduciary or other payee.]

b. **[Other] Evidence of Incompetency [ ].** When information [which does not constitute a judicial determination] is received [indicating] that a beneficiary may be incompetent [(VAR 1353), payments will *not* be suspended. The due process provisions of paragraph 14.37 will be for application and] the following action will be taken:

[(1)] If the information contains medical evidence adequate for a [rating] determination of incompetency [of a veteran or other payee beneficiary,] it will be referred to a rating board [for rating action] prior to referral to the VSO. [(As to minor children, see also par. 11.03).] Otherwise, [after] all indicated development by correspondence [(or field examination if essential),] the case [will be] referred for rating [decision as to competency (ch. 54). [The rating will be issued in memorandum format proposing a change in competency status (par. 14.37g). The due process notice and opportunity for hearing will be furnished and the case controlled for final rating action (par. 14.37h).

(2) When a final rating of incompetency is made, VA Form 21-592 will be sent to the VSO in the area in which the beneficiary resides with a summary statement of the information upon which the rating of incompetency was based and that required under paragraph 12.01c.

(3)] The VSO will investigate and furnish the requesting office a report of their findings and certification of a fiduciary or recommendation that payment to a fiduciary is not in order.

[(4) Upon receipt of the VSO's report and certification, if the VSO's findings are inconsistent with the rating board's decision, the case will be referred for rating board consideration of the report and recommendation prior to effectuating the required award action.]

12.06 EFFECT OF BOND REQUIREMENTS ON AWARD ACTION

a. **Corporate Fiduciary Without Bond.** When the certification from the VSO shows that a bond was not required from a bank, trust company, or other corporate fiduciary appointed as guardian to receive any VA benefit and it is determined thereafter that the same beneficiary is entitled to other benefits such as death compensation, DIC, pension, accrued benefits, etc., such benefits will be awarded to the bank or other corporate fiduciary, as guardian, without requesting a certification from the VSO.

b. **Fiduciary With Bond.** When the fiduciary appointed to receive any VA benefits has given bond, and thereafter additional benefits are payable to the same beneficiary, the VSO will be notified of the facts in the case, including the type and amount of benefits involved and requested to forward a certification relative to the adequacy of the bond. A 30-day (90 days outside the United States) control will be maintained.

c. **Request for Appointment of Fiduciary To Receive One Type Benefit When Claim for Other Benefits Is Pending.** When a request is being made on VA Form 21-592 for the appointment of a fiduciary to receive one

type benefit and an award of an additional type benefit on behalf of the same beneficiary is being withheld pending submission of additional evidence:

(1) The VSO will be informed of the contemplated award, including the approximate amount of such benefits, in order that a bond sufficient to cover all benefits payable may be obtained upon the initial appointment of the fiduciary.

(2) When the VSO certifies that an adequate bond has been furnished, it will not [then] be necessary to request further certification relative to the adequacy of the bond upon taking the subsequent award action.

d. **Awards in Care of Bonding Companies.** When a guardian agrees that payments will be made to the guardian in care of a bonding company, bonding agent or other person, payments will be so made at the latter's address [as certified by the VSO.]

12.07 CUSTODIAN-IN-FACT

The VSO may direct that an award [for a minor or incompetent adult] be made to a custodian-in-fact for a period of not more than 12 months from the date of designation. If the VSO directs payment under VAR 5063 at a rate less than the total benefit payable, award [and control] action will be taken as follows:

a. **Veteran or Widow/er.** On awards to veterans or widow(er)'s the difference between the amount awarded and the total benefit payable will be entered as a Type 1 Withholding.

[(1)] The award will show a total withholding effective at the expiration of the [VSO specified] period to insure that no further payments will be made [to the custodian-in-fact beyond that date.

(2) The case will be controlled for followup action 4 months following the date of certification for receipt of the VSO's designation of a permanent fiduciary (to whom withheld benefits will be released) or designation of the custodian-in-fact to receive the full amount of benefits, including withheld amounts.]

b. **Death Case–Child or Parent.** In death cases an award to a child or parent at a *reduced rate* directed by the VSO will require use of special law code 10 (par. 15.20a(10)(b)2). [Such award will be controlled as above for the 4-month period provided during which less than all benefits may be paid.]

(1) In an *apportioned* death case, the special law code must be made input on the *primary* widow(er)'s award when payment is authorized to the apportionee-child in an amount less than the apportioned share prescribed in appendix B.

(2) The difference between the apportioned share and the amount authorized will be included in the type 1 Withholding on the widow(er)'s award.

c. **Disability Case Apportionee.** In apportioned disability cases, since there are no specific amounts prescribed for apportionees, no special law code or other special action is required so long as the total amount payable in the case is properly disposed of by award and withholding (including any amount withheld for the apportionee) on the primary (veteran's) award.

[d. **All Apportionee Cases.** The provisions in subparagraph a above re control and limited period during which partial benefits may be paid are equally applicable to apportionee cases.]

12.08 GUARDIANSHIP APPOINTMENTS MORE THAN 1 YEAR OLD

An award will not be made to a guardian [or other fiduciary] whose appointment [or VSO certification] is more than 1 year old and to whom no payments have been made for a year, without VA Form 27-555 or other notice from the VSO showing that the appointment [or certification] remains in full force and effect.

a. Similarly, an award will not be made to a veteran or other adult beneficiary based on a [prior] supervised direct payment certification without notice from the VSO concurring with this method of payment.

b. This will normally be requested by memorandum to the VSO furnishing all pertinent information as provided in paragraph 12.01c.

12.09 AWARDS TO JOINT GUARDIANS

In cases of joint guardianship all awards payable to incompetent or minor beneficiaries will be made payable to the guardians as joint payees, in accordance with the VSO's certification.

12.10 AWARDS WHEN MORE THAN ONE GUARDIAN HAS BEEN APPOINTED

When it appears that more than one guardian has been appointed, this information will be referred to the VSO prior to any authorization action, in the following instances:

a. When payment is being made to a legally appointed guardian and it appears that there is a second guardian, whether or not by the same appointing authority, to whom no payments have been made. The VSO will advise the Adjudication Division whether payments should be suspended and will take appropriate action to remove a guardian, if necessary.

b. When more than one guardian has been appointed and no payments have been made to either guardian, the VSO will advise which guardian should be recognized.

12.11 CHANGE AND IRREGULARITY OF NAMES

a. **Change of Name**

(1) When a female guardian or legal custodian has remarried or is divorced subsequent to appointment, her statement relative thereto will be accepted without need for further evidence (VAR 1856) and VA Form 20-6566 will be used by the VSO or Adjudication Division to effect the change of payee name (par. 17.20). Minor change or correction in name (not identity) of any fiduciary, except a court-appointed fiduciary may also be effected by VA Form 20-6566 prepared and processed in the Input activity without need for Adjudication Division approval (par. 17.19).

(2) A change of name of a beneficiary may be made without prior approval of the VSO, except when payments are being made under letters of guardianship.

(3) When the fiduciary was certified by the VSO, VA Form 20-6566 to effect a change of fiduciary (identity) will be prepared only by the VSO or at his[/her] request (par. 17.20).

b. **Irregularity in Names.** The names of guardians and wards should be identical on guardianship papers and awards. When the name of the ward, as it appears on letters of guardianship, VSO's certification, etc., is not the same as that under which the claim was filed and there is no question of identity, the awards will be made in the name as shown on the VSO's certification.

12.12 VETERANS SERVICES OFFICER TO BE NOTIFIED OF CHANGES

a. **General.** A copy of all correspondence or authorization actions prepared by the Adjudication Division relating to awards or pending requests for appointment of fiduciaries in which the VSO may be concerned will be furnished his(her) office.

(1) When there is a change (including death of a beneficiary or transfer of claims folder) in an award to a fiduciary of an incompetent or minor beneficiary, [ ] an institutional award to the chief officer of an

institution, or award to the spouse of an incompetent veteran for use of the veteran and dependents, a copy of the award or other authorization form will be prepared and forwarded to the VSO.

(2) (Deleted by change 109.)

(3) Also see paragraph 2.05a in case of permanent transfer of claims folder.

b. **Institutional Awards.** In cases of institutionalized incompetent veterans, when the VSO having jurisdiction over the claimant's residence determines that neither a fiduciary nor spouse payee is in order, [the guardianship folder is referred] to the VSO having jurisdiction over the location of the institution. The latter becomes the "principal" VSO.

(1) The copies of all supplemental award actions, notices of changes, etc., for the VSO should be forwarded directly to the principal VSO in these cases.

(2) However, in those cases in which there is a fiduciary, either for the veteran or one or more apportionees, and also an institutional award, the copy(ies) will be forwarded to the VSO having jurisdiction over the fiduciary.

c. **Changes in Fiduciary Relationship.** When information is received that the fiduciary has ceased to have actual or constructive custody of the ward or is otherwise deemed unsuitable or unfit to act in a fiduciary capacity, the VSO will be fully informed of all the facts including a statement that payments have been suspended if such action is warranted. If the custodian [was] recognized under VAR 1850(C), see paragraph 12.16e.

12.13 PERSONS NOT TO BE NOTIFIED OF REQUEST FOR APPOINTMENT OF FIDUCIARY

In order to avoid appointment of guardians when not required or the appointment of unsuitable persons as guardians and to enable the VSO to authorize costs incident to the appointment of guardians, if in order, no one outside the VA will be notified by the Adjudication Division of a pending request for appointment of a fiduciary.

a. Inquiries regarding the status of a case received after VA Form 21-592 has been released will be referred for reply to the VSO to whom the VA Form 21-592 was forwarded.

b. After recognition of a court appointment of a fiduciary, or a spouse payee or custodian [ ] has been designated [or qualified] by the VSO, or an institutional award made, all correspondence received pertaining to the handling and use of fiduciary funds will be referred to the VSO for reply.

12.14 DESIGNATION OF PAYEES IN CASES OF INCOMPETENT OR MINOR INDIANS

When an award of any benefit is to be made to the superintendent or bonded officer recognized in accordance with VAR 5062, payment will be made for the use of the Indian beneficiary. Such awards will omit the name of the superintendent or other bonded officer. The payee will be entered on the award, for example, as follows: "Bureau of Indian Affairs (*name of Indian agency or station*), for (*name of Indian beneficiary*)."

12.15 BENEFICIARY COMPETENT [BY COURT DECREE]–GUARDIAN NOT DISCHARGED

When a beneficiary formerly held incompetent has been held to be competent by court decree, any benefits payable will be awarded direct to the beneficiary upon receipt of a certification by the VSO that the court proceedings restoring the beneficiary to competency were regular and proper in all respects notwithstanding that the guardian may not have been discharged. The amended award will show the facts as to restoration to competency. The VSO having supervision over the guardian will be furnished a copy of this award as notice of the action taken. [(See also par. 28.12c, re institutional awards.)]

a. If payments are being made to a child incapable of self-support by reason of mental defect, a new determination will be made by a rating board of the child's entitlement to the continuance of benefits.

b. Award action will not be deferred pending referral to the rating board. (See par. 54.01c.)

12.16 RECOGNITION OF CUSTODIAN UNDER [38 CFR 3.850(c)]

a. **Authority.** When the following conditions are present, payments may be made to a custodian on behalf of a minor child or [minor] child permanently incapable of self-support (rated incompetent), without *prior* submission to or certification by the VSO, pursuant to the provisions of [38 CFR 3.850(c):]

(1) Custodian to be recognized is the natural, adoptive or stepparent of the child (legal relationship must be established);

(2) The child is in the actual or constructive custody of the parent (except when committed to a hospital for the insane); and

(3) There is no information of record that the parent is unfit.

b. **Limitation.** [Title 38, Code of Federal Regulations, section 3.850(c)] will not be applied when:

(1) A legal custodian or fiduciary has been certified by the VSO;

(2) Either a court-appointed fiduciary is in effect or an appointment is pending;

(3) VA Form 21-592 action is required by reason of [incompetency of an *adult* helpless child, or] the child's entitlement to USGLI or NSLI benefits payable in a lump sum.

c. **Preparation of Award.** [Prepare] awards under [38 CFR 3.850(c)] showing the name of the parent as "Custodian." The notation "Custodian recognized under [38 CFR 3.850(c)]," will be [annotated as "remarks"]. Copies of award [documents] authorizing payments to a fiduciary recognized under [38 CFR 3.850(c)] will be [provided] for the VSO for the office of jurisdiction. However, code "99" will be entered as [the fiduciary file location] for identification of those accounts under [38 CFR 3.850(c)]. [No award under [38 CFR 3.850(c)] shall be made for any incompetent *adult* helpless child. (See also par. 12.01a.)]

d. **Notice of Award to Custodian.** Unless a dictated letter is required (see par. 15.11e), [a Target System generated letter] will [ ] advise the custodian of the award action.

e. **Referrals to VSO.** As provided above, copies of awards under [38 CFR 3.850(c)] will be referred to the VSO in the office of jurisdiction.

(1) If, after an award to a custodian in accordance with subparagraph a above, the VSO certifies a different person or the same individual as fiduciary, [delete] ~~VSO code~~ 99 and [make] payments [ ] under existing procedures in accordance with the VSO's certification. This may occur in any case in which the custodian recognized by the Adjudication Division is found unsuitable to act in a fiduciary capacity. Moreover, the VSO may recommend suspension of payments when necessary to conserve the beneficiary's funds, and proceed with the appointment of an acceptable fiduciary.

(2) When the Adjudication Division receives information that a custodian recognized under [38 CFR 3.850(c)] ceases to have custody of the veteran's child(ren), [submit] VA Form 21-592 [ ]to the VSO furnishing complete information as to the actual custody of the child(ren). Information [ ] on the suitability of a parent-custodian to act in such capacity will be referred by memorandum to the VSO for investigation and such certification as provided above.

12.17 SUPERVISED DIRECT PAYMENT CASES

Under [38 CFR 13.56], the VSO may authorize direct payment of benefits, under his/her supervision, to veterans rated incompetent or to any other adult beneficiary for whom appointment of a fiduciary has been requested based on VA rating or judicial determination of incompetency. When the VSO concludes that such method of payment is consistent with the person's capacity and will afford reasonable protection of the payee's interests, the approval of the VSO for supervised direct payment in a case will be indicated on VA Form 27-555, Certificate of Legal Capacity To Receive and Disburse Benefits.

a. **Award Action.** When certification is received for supervised direct payment to a veteran or other adult beneficiary, [annotate] the award [document] effectuating the certification [ ] as follows and [refer] a copy [ ] to the certifying VSO:

(1) [Annotate] the location and regional office code number of the certifying VSO.

(2) [Annotate] the legend, "VAF 27-555 ___(date)___ , supervised direct payment."

b. **Award for Less Than Full Rate.** The VSO may provide on VA Form 27-555, in both veteran and other adult beneficiary cases, that less than the full amount be released to the beneficiary for a limited period of time, generally 6 months, but in no event to exceed 1 year. [Make] payments as certified and [control] the case for a date 6 months after date of certification.

(1) If the payee is a veteran or a surviving spouse, [treat] the amount not paid [ ] as an "open-end" type "1" withholding. (See also par. 28.02 re veteran award procedures.)

(2) If the beneficiary is a parent or a helpless child who has attained majority, [make] the award [ ] at the reduced rate. Since a child or parent award cannot provide for a withholding, the award at the reduced rate will require use of special law code 10 (par. 15.32a(10)).

(3) If the beneficiary is receiving [benefits] under an apportioned award, see paragraph 12.07 b and c re required action.

(4) Upon expiration of the 6-month control, [request] the VSO [ ] to furnish certification for release of withheld amounts to:

(a) The payee, or

(b) A fiduciary, as certified.

(5) If extension of the period for payment of less than the full rate is required, the VSO will certify an additional period, which will not exceed the 1 year limitation. [Establish] control [ ] in these cases for 30 days *prior* to the expiration of the extended period and [request] the VSO [ ] to furnish certification for release, as provided above.

c. **Data Entry.** [Enter] the [fiduciary file location] and competency payment code 5 [ ] in awards to veterans.

12.18 AWARD TO SPOUSE UNDER [38 CFR 3.850(a)(2).]See paragraph 26.11.

CHAPTER 14. SPECIAL DETERMINATIONS AND ADMINISTRATIVE DECISIONS

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CHAPTER 14. SPECIAL DETERMINATIONS AND ADMINISTRATIVE DECISIONS

SUBCHAPTER I. DETERMINATIONS AS TO [STATUTORY BAR TO BENEFITS,] CHARACTER OF DISCHARGE, LINE OF DUTY, AND WILLFUL MISCONDUCT

14.01 [STATUTORY BAR TO BENEFITS AND] CHARACTER OF DISCHARGE DETERMINATIONS

a. **General.** A discharge "under conditions other than dishonorable" is prerequisite to eligibility for VA benefits based on the service of a "veteran" (38 U.S.C. 101(2)). The provisions of VARs 1012 and 1013 are for application.

(1) An honorable discharge or a general discharge, being discharges under honorable conditions, are binding on the VA as to character of discharge, entitling an individual so discharged to full rights and benefits, unless there is a bar to benefits under 38 U.S.C. 3103(a). [ ]

(2) The effect of an undesirable discharge, other than honorable discharge, and bad conduct discharge can only be resolved by a formal finding as provided in this paragraph.

(3) A dishonorable discharge [or a statutory bar] deprives the claimant of all gratuitious veteran's benefits. Such a discharge [or statutory bar] is binding on the VA as to character of discharge unless it is determined that the veteran was insane when committing the act(s) which resulted in this discharge (see par. 14.05).

[b. **Statutory Bar to Benefits.** Authorization responsibility for development prior to making an administrative decision is as follows:

(1) The facts cited by the service department on a VA Form 60-3101, Request for Information, will usually be sufficient for an administrative decision in the following cases unless the issue of insanity is raised (VAR 1012 (B)) in which event, full and complete development is in order. (See par. 14.05.)

(a) Discharge on the ground that the person was a conscientious objector who refused to perform military duties or refused to wear the uniform or otherwise to comply with lawful orders of competent military authorities.

(b) Discharge or dismissal by reason of the sentence of a general court-martial.

(c) Resignation of an officer for the good of the service.

(d) Desertion.

(2) In cases of discharge for alienage (VAR 1007(B) and 1012(C) (5)) when the character of discharge during a period of hostilities was not changed to honorable prior to January 7, 1957, as described in VAR 1007(B), specific request should be made to the service department for information to determine if the records show that the veteran requested the discharge. The absence of affirmative evidence shown by the service department's reply or otherwise contained in the file that the veteran requested the release is a sufficient basis for a favorable decision.

(3) When a possible continuous period of 180 or more days of unauthorized absence is indicated in a case with an other than honorable discharge, a VA Form 60-3101 will be used to obtain complete military records including information as to the exact dates and nature of the lost time. If the response from the service department confirms a continuous period of 180 or more days of unauthorized absence (exclusive of periods of imprisonment or confinement) which led to the "other than honorable" discharge, the claim will be notified with due process notice (see par. 14.02) that a statutory bar to benefits may exist because of unauthorized absence from

(date) to (date), and that if there were compelling reasons to warrant this absence (VAR 1012(C)(6)) the VA should be notified in writing within 30 days. (See par. 14.01h(4)).

(a) **Unfavorable Determination Involving VAR 1012(C)(6).** When an adverse determination for unauthorized absence of 180 days or more is made, the "Issue" of the administrative decision will be "Statutory Bar Under 38 U.S.C. 3103(a)" rather than "Character of Discharge". The "Conclusion" will be "The discharge for the period ____ _____ to _____ is considered to be a bar to VA benefits under the provisions of VAR 1012(C)(6) and 38 U.S.C. 3103(a)". A separate decision concerning character of discharge will not be made since VAR 1012(A) is not an issue.

(b) **Favorable Determinations Involving VAR 1012(C)(6).** When it is determined that compelling circumstances existed and the claimant is not barred under VAR 1012(C) and if a special upgraded discharge has not been affirmed by the Discharge Review Board review under Public Law 95-126, a separate determination on the same administrative decision as to character of discharge under VAR 1012(A) is required.

[NOTE: Records added to BIRLS from VADS after October 16, 1975 include the reason for separation. When the reason code shown in the BIRLS master record is "T38" "953", "BEO" or "DRO," further development of circumstances of discharge is required regardless of indication that character of discharge was "honorable" or "general".

c. **Character of Discharge Determinations.]** The Adjudication Division is charged with the responsibility of determining whether an "other than honorable" discharge was granted under conditions other than dishonorable for purposes of eligibility for all VA benefits. In addition, upon request, the Adjudication Division will make these determinations for other agencies, such as the U.S. Department of Labor, U.S. Railroad Retirement Board and State agencies. (See ch. 13.)

(1) It is most important that the due process provisions of VAR 1103 be strictly observed whenever the VA is required to make a determination involving character of [service] (See par. 14.02.)

(2) These determinations are not made for VA claims purposes until the matter is placed in issue by an application from the veteran or an eligible dependent for benefits for which an other than dishonorable discharge is a prerequisite.

(3) [An administrative decision] will not be necessary if there was a *separate period* of honorable service prior to the service at issue, from which the veteran was eligible for or received an unconditional discharge (VAR 1013), *unless*;

(a) The later period of service is required for eligibility to the benefit(s) claimed (i.e., disability incurred during such period), or;

(b) It will provide the prerequisite wartime service required for disability of death pension and the discharge from such period was other than under honorable conditions.

[d.] Development. [ ] If the discharge was the result of any of the offense(s) specified in VAR 1012(D), involving any of the following, the complete copy or summary of the proceedings which led to the discharge will be requested from the service department.

[(1)] Moral turpitude.

[(2)] Conviction of a felony.

[(3)] Acceptance of an undersirable discharge to escape general court martial trial.

[(4)] Willful and persistent misconduct.

[(5)] Mutiny or spying, or

[(6)] Homosexual acts.

[ ]

[e.] **Determination.** A formal decision is required whenever the discharge at issue is not specifically honorable or general. [(See par. 14.01g re Vietnam Era Special Upgraded Discharges.)]

(1) In any case involving a discharge issued as "dishonorable" there must be, as a minimum, a finding that the issue of the veteran's sanity is not involved.

(2) If the veteran had *more than one period of service* the determination will contain information outlining the periods of satisfactory as well as the periods of unsatisfactory service.

(3) The formal decision will be prepared as provided in paragraph 14.34 for the approval of the Adjudication Officer or designee not lower than a section chief.

[f.] **"Clemency Discharges."** A Clemency Discharge *does not* entitle or reinstate entitlement to benefits administered by the VA. All copies of a DD Form 214 issued to *military absentees* granted clemency under Presidential Proclamation No. 4313 will show in the remarks section: "Subject member has agreed to serve _____ months alternate service pursuant to Presidential Proclamation No. 4313." In addition, the VA copy of the DD Form 214 which goes to Austin DPC (but not to the dischargee) will give the reason for separation as "Separation for the good of the service by reason of a willful and persistent unauthorized absence, pursuant to Presidential Proclamation No. 4313." [The separation reason code shown in BIRLS will be "953" for those cases added to BIRLS from VADS after October 16, 1975.] The service department will also issue a special type of discharge–a Clemency Discharge (DD Form 1953)–which will be substituted for the previously awarded undesirable discharge.

(1) Development prior to making a determination on service resulting in a Clemency Discharge will be made in accordance with subparagraph c above.

(2) Notifications will be furnished as provided in paragraph 14.02.

[g.] **Effect of Change in Character of Discharge**

[(1)] Notwithstanding the existence of a formal determination by the VA as to a statutory bar pursuant to VAR 1012, a subsequent decision of a service department acting through a Board for Correction of Records or [prior to enactment of Public Law 95-126 effective October 8, 1977, and with the exception of the bar contained in VAR 1012(C)(2) through a] Discharge Review Board changing the character of discharge to honorable or dishonorable, is final and conclusive upon the VA (VAR 1012(C)(6) and (F)).

[(a)] A formal decision vacating the earlier decision will not be required. However, the prior decision will be annotated to show that it has been superseded by a subsequent "corrected" discharge.

[(b)] If the character of the subsequent "corrected" discharge is other than honorable, requiring a reconsideration and redetermination, a formal decision will be required in accordance with subparagraph [e] above.

[(c)] The effective date of benefits authorized by reason of a change in the character of discharge will be governed by the provision of VAR 1400(G) (e.g., see par. 43.06i(4).)

[(2)] In accordance with VAR 1012(G), the VA will not recognize an honorable or general discharge issued on or after enactment of Public Law 95-126 effective October 8, 1977 by a Discharge Review Board as setting

aside a bar under VAR 1012(C). Only favorable action by a Board for Correction of Military Records will overcome this bar. If such an upgraded discharge is received, the claim will be examined for the existence of a statutory bar. This provision also applies to those discharges which were issued prior to October 8, 1977 under the special review program (VAR 1012(H)) even when a subsequent review by the Discharge Review Board confirms that the upgrading would be warranted under the uniform–published review criteria.

h. **Vietnam Era Special Upgaraded Discharges.** In addition to requiring that the Department of Defense establish a set of uniform procedures and standards for use by the DRBs (Discharge Review Boards), Public Law 95-126 provided that VA benefits would not be paid solely on a discharge upgraded pursuant to the Presidential Memorandum of January 19, 1977 or the DOD Special Discharge Review Program.

(1) **VA Has Final Responsibility.** The VA retains final responsibility for determining whether eligibility for VA benefits exists. If the second review required by Public Law 95-126 was favorable (i.e., the upgrading of the veteran's discharge was upheld), the VA may still deny eligibility if one of the statutory bars of VAR 1012(C) is applicable.

(2) **Denied Upgrade Discharge.** Entitlement to VA benefits may be established despite an unfavorable DRB decision by a VA character of discharge determination which finds the veteran's original "other than honorable" discharge was issued under conditions other than dishonorable and that no statutory bar exists.

(3) **Eligibility for DRB Second Review.** To have been eligibile for the DRB second review, an individual must have:

(a) Served between August 4, 1964 and March 28, 1973; and

(b) Been released with an "other than honorable" discharge and

(c) Been issued an upgraded discharge on or after January 19, 1977 under the provisions of the Presidential Memorandum of January 19, 1977, or the DOD Special Discharge Review Program.

(4) **Identifying cases subject to Public Law 95-126.**

(a) Analysis of the following items on the DD 214 will assist in identifying upgraded discharges;

1. Item 9A shows "Discharge."

2. Item 9F shows "Certificate Issued."

3. Item 13 (Reserve Obligation) shows "NA."

4. Items 21 and 27 shows 30 days or more Time Lost.

5. Item 29 shown no signature of person separated.

6. For upgrades issued as a result of the Presidential Memorandum of January 19, 1977, the VA copy (copy 3) of the corrected DD 214 contains a statement in Item 27 (Remarks) to the effect that the discharge was upgraded to "Undrer Honorable Conditions" by the January 19, 1977 extension of Presidential Proclamation 4313 by virtue of being wounded in combat or decorated for valor in Vietnam.

7. For upgrades issued as a result of the DOD Special Discharge Review Program, the VA copy (copy 3) contains the narrative reason for separation, "Upgraded under the DOD Discharge Review Program (Special)," and also indicates the date the individual first applied for discharge upgrade, the date the discharge was upgraded and the character of service (discharge) prior to upgrade.

(b) For each individual upgraded under the Presidential Memorandum, the BIRLS record has been established or updated to show the type of discharge as "HONORABLE" and the separation reason as "BEO" (By Executive Order). For each individual upgraded under the DOD DIscharge Review Program, the BIRLS record has been established or updated to show the type of discharge as "HONORABLE" and the separation reason as "DRO" (Discharge Review–prior discharge under conditions other than honorable) or "DRG)) (Discharge Review–prior discharge Under Honorable Conditions, commonly called general).

(c) Veterans who had general or "under honorable conditions" discharges upgraded by the special review program (BIRLS separation reason "DRG") or who had filed a claim for VA benefits based on "other than honorable" discharges and had received a favorable character of discharge determination prior to enactment of Public Law 95-126 effective October 8, 1977, are exempt from the procedures applicable to special upgraded discharges.

(5) Adjudication Procedures

(a) Unfavorable DRB Decisions. Eligibility to VA benefits will rest on the merits of the original "other than honorable" discharge in cases of unfavorable DRB decisions. Due process procedures will be followed and another administrative decision will be made even when the claims folder contains an unfavorable administrative decision will be made even when the claims folder contains an unfavorable administrative decision made prior to the issuance of the adverse DRB decision.

(b) Favorable DRB DEcisions. If the DRB decision was favorable, the Authorization activity must carefully review full service records to determine that none of the conditions under VAR 1012(C) is for application.

1. VAR 1012(C) Not Applicable. If it is determined that the veteran was not discharged for one of the conditions listed in VAR 1012(C) and a previous administrative decision held that the character of discharge was not other than dishonorable, that decision will be annotated to show dates of application for discharge review, date of initial upgrade and date of affirmed upgrade. No administrative decision is required unless an effective date of chapter 34 benefits prior to the date of the special upgrade decision is for consideration. In such cases, an administrative decision is required to determine whether the veteran would have been prevented from receiving benefits based on the original "other than honorable" discharge.

2. VAR 1012(C) a Possible Factor. When service records indicate that the discharge was for one of the reasons specified in VAR 1012(C) the claimant will be provided a due process notice prior to making an administrative decision. Following receipt of any evidence from the claimant or the expiration of the 45 day diary, whichever is earlier, the Authorization activity will review the case and prepare an administrative decision citing VAR 1012(H) as the authority for "looking behind" a DRB decision. If it is determined that the individual's discharge was issued under conditions which preclude the payment of VA benefits, the issue(s) of a possible conditional discharge and/or entitlement to 38 U.S.C. chapter 17 medical benefits will be discussed and resolved in the same administrative decision (see par. 30.02f).

NOTE 1: Unless a valid conditional discharge for a separate period of service is established, eligibility to chapter 17 medical benefits must be denied due to the existence of a statutory bar.

NOTE 2: A special upgraded discharge that has been affirmed by a Discharge Review Board under Public Law 95-126 is considered to be an honorable discharge for purposes of entitlement to unemployment compensation under 4 U.S.C. 85 even if it is determined that a statutory bar exists under VAR 1012(C)(6).

(c) Effective Dates For Compensation and Pension Benefits. The provisions of VAR 1400(B) and (G) are for application. Generally, payments will be authorized from the date an application for review of discharge was filed with the service department (Jan. 19, 1977 will be considered the date of application for all discharges updated under the Presidential Memorandum of January 19, 1977; the date the original application was filed with the service department will be used for DOD Special Review Board cases); or the date the claim was filed with

the VA, whichever is later. However, if a previously disallowed claim is reopened based on a change in the character of discharge, payments may be authorized 1 year prior to receipt of the reopened claim, *EXCEPT* that the effective date of such retroactive payments may not be earlier than the date on which the application for review of discharge was filed with the service department or the date of receipt of the previously disallowed claim, whichever is later.

i. **Conditional Discharges.** Section 101(18), title 38, U.S.C. provides that an individual who enlisted or reenlisted before completion of a period of active service can establish eligibility to VA benefits provided he/she satisfactorily completed the period of active service for which he/she was obligated at the time of entry even if the subsequent discharge was under dishonorable or "other than honorable" conditions or a statutory bar exists for entitlement to benefits for the latter period of service.

(1) **Development.** When the application, service records or DD Form 214 of an individual who was released under dishonorable or "other than honorable" conditions shows prior active service, a VA Form 60-3101 will be sent to the appropriate service department with the following statement: "Was the veteran eligible for complete separation prior to (date of dishonorable or 'other than honorable' discharge)? If not, please state date(s) on which this individual completed the period(s) of active service for which he/she was obligated at the time(s) of induction or reenlistment(s)." Service records, including any Board of Officer or court-martial proceeding will be requested at the same time.

(2) **Character of Discharge Determination.** If development discloses a prior period of honorable service which would qualify the claimant for the benefit(s) requested (i.e., the veteran was eligible for a complete discharge at some time in the past), the claim will be adjudicated on that basis; otherwise, a statutory bar or character of discharge determination will be required. If it is determined that there is a statutory bar or the last discharge or release was under dishonorable conditions for VA purposes, the same administrative determination will discuss the issue of "conditional" discharge(s). Consideration will be given to whether the veteran rendered faithful and meritorious service through the period of active duty for which he/she was obligated at time of induction or enlistment. When the veteran had several enlistments, the period to be considered will begin with the intial enlistment or induction and end with the date given by the service department as the completion date for the last full enlistment. If the last enlistment period does not meet the "faithful and meritorious service" criteria, it will be dropped and consideration given to using next to last enlistment period as the completion of service date.

(3) **Effective Dates for Compensation and Pension Claims**

(a) **Presumptive Periods.** The scheduled (i.e., "conditional") discharge date, as certified by the service department and authorized by the character of discharge determination, will be treated as though the veteran had actually been given a complete and honorable separation. All presumptive periods and any other issue which relates to "date of discharge or release" will be measured from that point.

(b) **Date of Payment**

1. **Initial Claim.** If the claimant has never filed for VA benefits, payments based on the establishment of a conditional discharge will be as provided by VAR 1400(G) or the effective date of the law (10/8/77), whichever is later.

2. **Reopened Claim.** When a conditional discharge is established for a case in which there was a previous disallowance, VAR 1114(A) will permit payment 1 year prior to the date of the reopened claim, but in no event earlier than October 8, 1977.

j. **Health Care Benefits For Former Military Personnel With Certain "Other Than Honorable" Discharges.** Effective October 8, 1977, any serviceman or woman who was discharged under "other than honorable" conditions is eligible for the health care and related benefits authorized under chapter 17 of title 38, U.S.C. for any disability(ies) incurred or aggravated in line of duty during active service, *PROVIDED THAT* he or she

was not discharged by reason of a "bad conduct" discharge or under one of the statutory bars of VAR 1012(C). Any claim which requires preparation or review of a statutory bar or character of discharge determination will be considered a claim for this benefit.

(1) **Statutory Bar or Character of Discharge Determination.** The "CONCLUSION" section of all *unfavorable* statutory bar or character of discharge determinations for living claimants with "other than honorable" discharge will include the following eligibility statement: "The individual (is or is not, as appropriate) entitled to health care under chapter 17 of title 38, U.S.C. for any disabilities determinate to be service connected." When a character of discharge determination without this statement is discovered during routine review of a living claimant's claim folder, the case will be referred to an adjudicator for an eligibility determination and the annotation of the appropriate eligibility statement on the existing determination.

(2) **Notification to Claimant.** In the absence of a statutory bar, the Authorization activity will be responsible for notifying the claimant when entitlement to health care is established, that although the conditions surrounding his/her discharge generally preclude payment of VA benefits, there may be eligbility to VA medical care for any disability or disabilities incurred or aggravated during active service. Suggested language for this notification is shown in pattern letter figure 14-3.]

14.02 NOTIFICATIONS PRIOR AND SUBSEQUENT TO DECISION

a. **Notification in Advance of Determination.** In *all* cases in which a character of discharge determination is necessary (not excluding dishonorable discharges), the claimant will be informed in advance of that fact and of his/her legal and procedural rights. The initial notice to the claimant will advise the following (see pattern letter and attachment, figs. 14-1 and 14-2):

(1) Reason why a character of discharge determination is necessary.

(2) Criteria on which it will be based. (Explain and cite the applicable VA regulations.])]

(3) That the VA has asked the service department for a report of or information about the discharge proceedings.

NOTE: Discharge proceedings will not be requested by the VA if a dishonorable discharge was issued unless the issue of insanity is involved. (See par. 14.05 when insanity is involved.)

(4) The right to submit any evidence, contention or argument bearing on the issue.

(5) That he/she may request a personal hearing prior to the determination for which the VA will furnish the hearing room, provide hearing officials and prepare a transcript of the proceedings; but that no other expense connected with the hearing can be borne by the VA.

(6) That if the claimant does not reply within 30 days, the VA will assume he/she has no additional evidence to submit and does not desire additional time for presentation of his or her case. [(See par. 14.36e(3)]. A decision will then be made on the basis of evidence of record.

b. **Right of Representation.** The claimant will be informed of the right to be represented, without charge, by an accredited representative of a recognized Veterans Service Organization or the National Red Cross or may employ an attorney of the claimant's choice to assist in prosecuting the claimant's claim, and to appear with the claimant if a personal hearing is requested.

c. **Effect of determination.** A full explanation will be included that an adverse determination is a bar not only to benefit claimed but to all gratuitious [other] VA benefits as well.

d. **Statement of Policy.** Include a statement that it is the established policy of the VA to assist a claimant in developing the facts pertinent to a claim and to render a decision which grants the claimant every benefit that can be supported in law while protecting the interest of the Government.

e. **Post Decision Notification.** In all instances, irrespective of the purpose for which a determination is made, the claimant will be promptly informed of the results. When the decision is adverse, the claimant will be advised of its effect on all VA benefits. The notification will cover the right of appeal and the procedure to be followed if a review of the character of discharge by the service department is desired. (See pattern letter, fig. 14-3.)

(1) When the determination was made at the request of another VA organizational element, they will also be notified as to the decision made. If a VA medical unit is concerned, teletype or other rapid means of communication will be used.

(2) If the basic entitlement information request originated outside the VA, the requesting agency will be informed of the determination as to each period of service. If the agency furnished a form for reply it will be used; otherwise, a deictated letter will be prepared.

f. **Method of Notification.** All applicants will receive notification by letter. All letters will be typewritten (MTST) and not locally printed or reproduced.

[g. **Change to Type of Discharge in BIRLS.** In those cases when an adjudicative determination is made on the character of discharge for VA purposes, the Authorization activity will request that BIRLS be updated to reflect the decisiion by entry of code 4 (Honorable for VA Purposes) or code 5 (Dishonorable for VA Purposes), as applicable. In Target stations this change will be input by the adjudicator in conjunction with any other necessary input. Cases encountered in routine processing which contain such adjudicative determinations made prior to institution of these codes should be updated to reflect the appropriate code.

(1) **Conditional Discharges–One Period of Service.** A BIRLS master record will allow two periods of service and two types of discharge codes. If a character of discharge determination finds that a veteran was discharged from a period of service under dishonorable conditions for VA purposes but was eligible for complete separation at an earlier date, such period of service will be entered in BIRLS as two separate periods. The RAD date for the initial period of service will be the date that the veteran would have been eligible for complete separation and the type discharge coded as "HVA". The remainder of that period of service will be shown as the second period of service and the type discharge coded as "DVA". A SEP REAS (Separation Reason) of ADM (Administrative Decision) will also be input to the BIRLS record.

(2) **Conditional Discharges–Two Periods of Service.** If the veteran already has two separate periods of service shown in BIRLS, one of which is shown as an OTH discharge, the portion of that period of service determined to be honorable for VA purposes will be coded to replace entire OTH period of service. The remainder of that period of service determined to be dishonorable for VA purposes will not be coded into BIRLS since only two periods of service can be shown in the BIRLS master record.

(3) **BIRLS Input Procedures.** Changes to the periods of service, types of discharge and separation reason may be made over the Target System using a BUPD (BIRLS Update) command or over ARS (Advanced Record System) equipment. Changes to discharge data in BIRLS must be authorized by the Adjudication Officer or designee, not lower than a Unit Chief.]

14.03 LINE-OF-DUTY DETERMINATIONS

a. **Need for Determinations.** A determination of whether a disability or death was incurred "in-line-of-duty" is made regarding on those disabilities or death for which service connection is at issue. (See VAR 1001(M); also par. 14.04g re death pension eligibility under VAR 1001(D).) When the service department has made a formal or informal determination that a disability or death was incurred in-line-of-duty, that finding will be

accepted as conclusive for VA purposes unless there is overwhelming evidence of willful misconduct. Similarly, when service records show that death occurred while flying in a military aircraft while on duty status, a determination is not necessary. A formal VA determination whether favorable or unfavorable as to line of duty will be made when;

(1) The service department has not made such finding, and the injury or death was incurred under circumstances which raise a legitimate issue of willful misconduct, or;

(2) The service department has held the disability or death *not* in line of duty, or;

(3) In the rare case, in which a favorable service department finding may be properly questioned.

NOTE: Injuries shown by service records to have been incurred accidently or incurred under circumstances which obviously indicate accidental incurrence, especially if incurred in a combat zone will not require development or a formal decision unless there is specific information citing circumstances of unauthorized leave or willful misconduct.

b. **Development.** When death occurred on or after January 1, 1957, the service departments are not required by law to make a formal line-of duty finding. They have agreed, however, to continue to make investigations and furnished reports to the VA when required. However, it is not always sufficient to assume that an investigation was made in a given case. For that reason, the request should state briefly what is required, either in the form of a question or a record that is known to exist or may reasonably be expected to exist.

c. **Responsibility.** The authorization unit is responsible for all line-of-duty determinations except those involving disease or suicidal death. When disease or suicidal death is involved the rating board has jurisdiction. (VAR 1301 and 1302)

d. **Determination.** Determinations made by the Authorization Unit will be prepared for approval by an authorizer as provided in paragraph 14.34. Those by a rating board will be included in the formal rating decision.

14.04 WILLFUL MISCONDUCT AND VICIOUS HABITS DETERMINATIONS

a. **General.** Willful misconduct is basically the intentional doing of something either with the knowledge that it is likely to result in serious injury or with a wanton and reckless disregard of its probable consequences.

(1) A determination will be made as to willful misconduct when a death or disability which affects entitlement was incurred under questionable circumstances.

(2) The principles stated in paragraph 14.03a regarding circumstances which do not warrant raising a question as to line of duty are applicable to willful misconduct. (See VAR 1001(N).)

b. **Proximate Cause.** Injury may not be held due to willful misconduct on the basis of an act "malum in se" or "malum prohibitum" unless the wrongful act was in and of itself the proximate cause of the resulting injury.

c. **Alcoholism.** Basic principles for application in deciding cases involving alcoholism are stated in Administrator's Decision No. 988, which classifies the injurious effects of drinking alcohol into two distinct groups.

(1) **Proximate and Immediate Effects.** A person will be held responsible for disabling injuries or death which resulted directly and immediately from indulgence in alcohol in an individual occasion. The willingness to achieve a drunken state and while in this condition to undertake tasks for which unqualified physically and mentally by alcohol is willful misconduct.

(a) Determinations of willful misconduct in such cases will depend upon the facts found in the individual cases, but care should be exercised to guard against findings of willful misconduct on the basis of inconclusive evidence. An adverse determination requires that there must be excessive indulgence which was the *proximate cause* of the disability or death in question.

(b) Laboratory tests bearing on the issue of alcoholic intoxication should be considered together with all other facts and circumstances in determining willful misconduct. The following table is to serve only as a guide:

Standards Used by the National Safety Council, U.S. Department of Transportation, and Departments of the Army, the Navy, the Air Force, and the Defense Supply Agency

Blood Alcohol Percentage	Level of Intoxication
.00 - .05	Presumed not to be under the influence of intoxicating liquor.
.05 - .10	No presumption that the person was or was not under the influence of alcohol; however, such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.
.10 or more	Presumption established that the person was under the influence of intoxicating liquor.

(2) **Organic Secondary Effects.** Organic diseases and disabilities which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, are not to be considered of a willful misconduct origin. The development of the secondary condition does not meet the definition of intentional wrongdoing with knowledge or wanton disregard of its probable consequences.

d. **Automobile Accidents** The following principles are for consideration when the veteran's disability or death resulted from an automobile accident and it is established that the veteran was the operator of the vehicle or contributed in some way to the cause of the accident (i.e., interference with the operator).

(1) **Wanton and Reckless Disregard.** Generally, the decisive factor is whether the evidence clearly establishes there was a wanton and reckless disregard of the probable consequences. Determination of that issue requires an assessment and careful consideration of all evidence available, including police reports (which should be obtained, if possible).

(a) In vehicular accident cases, in particular, there is frequently no direct testimony or such testimony in itself presents an incomplete picture.

(b) In such instances, the secondary evidence assumes added importance and factors such as skid marks, damage to vehicles, position of vehicles after the accident in relation to the point of impact, evidence of debris, scattered parts, etc., form evidence entitled to great weight, for such facts "speak for themselves" and are not subject to the variations of observation or color of interest often found in direct testimony.

(2) **Weight To Be Given Service Department Findings.** Service department findings including "no misconduct" determinations will be given due consideration, but the decision of the VA must rest upon principles developed under VA laws with special reference to wanton and reckless disregard of the probable consequences, as evidence of willful misconduct.

(3) **Combined Factors To Be Considered.** In automobile accident cases, all factors should be considered, such as evidence of excessive speed, improper diversion of attention to companions, use of intoxicants, etc. Although a single factor may not of itself be sufficient in a given case to be held wanton or reckless or the proximate cause, it is possible that in view of combined factors the veteran's manner of operation of a vehicle was so unreasonable and dangerous as to constitute a wanton and reckless disregard of the probable consequences and it would be reasonable to conclude that an accident proximately resulted from such combined factors in the absence of any showing of intervening cause, such as mechanical defect in the vehicle, a defect in the road, or actions by some other person.

e. **Responsibility for Determinations**

(1) **Willful Misconduct.** The rating board will determine the issue in cases involving disease or suicidal death (VAR 1301 and 1302). All other determinations are the responsibility of the Authorization unit.

(2) **Vicious Habits.** The meaning of "vicious habits" is stated in VAR 1301(B) and its application is limited to disability pension cases. The significance is usually medical in nature and, when related to etiology of a disease, the question is for consideration by the rating board.

f. **Format.** When determination is to be made by the Authorization unit, a formal decision will be prepared for approval by an authorizer as provided in paragraph 14.34. Determinations by the rating board will be included in the formal rating decision.

g. **Additional Development Required.** When death occurs in service [ ] and it is determined that it was not in line of duty or [that it] was due to willful misconduct, death pension benefits may nevertheless by payable, [ ] provided the [serviceperson] had [completed at least] 2 years' honorable active service, [one day of which was wartime serivce,] prior to death (VAR 1001(D)). [Under those circumstances,] development to verify whether or not the [serviceperson] had

the requisite service will be made in accordance with paragraph 6.05, by VA Form [00]-3101, Request for Information, inserting in the item Additional Information Requested: "Please verify 2 years honorable active service on enlistment prior to death."

14.05 INSANITY

a. **General.** If it can be established that a veteran was insane at the time of the commission of the act or acts that would otherwise result in an adverse character of discharge, line of duty, or misconduct determination, it must be held that the veteran was without fault and is not precluded from any VA benefits thereby. (See also par. 14.09d.) Insanity is placed into issue by:

(1) Specific allegation by the veteran or an authorized representative.

(2) By the adjudicator when the evidence indicates the possible existence of insanity.

(3) When suicidal death occurs in service.

b. **Development.** When insanity is in issue, complete development must be carried out before a decision is made. All service and postservice medical records in any way pertinent must be procured (see par. 6.05e). In addition, complete transcripts of any court-martial or board proceedings that may be relevant should be obtained.

NOTE: The request on VA Form [00]-3101 should specifically set forth that the reason therefor is that "the issue of insanity has been raised."

c. **Rating Board Action.** After completion of development, authorization will refer the case for rating board disposition of the insanity issue. The rating board will make its decision in a memorandum rating in which the question of insanity will be the sole issue (par. 47.10) unless death was self-inflicted while in service. If suicide occurred while in service the rating board will include the determination in the formal rating decision. The memorandum or formal rating will then be forwarded to Authorization for final action.

d. **Authorization Action.** Upon receipt of a *memorandum* rating, irrespective of whether or not insanity is established, Authorization will prepare a formal decision as to character of discharge, line of duty, etc. for approval as required. (See pars. 14.01[c], 14.03d and 14.04f.) All subsequent action will be based on this decision or upon a formal rating decision which may have been made.

[14.05.1 PEACETIME POW STATUS DETERMINATIONS

a. **Requirement.** An administrative decision is required for each case involving claimed POW status based on peacetime service. Prepare a determination in the format provided in paragraph 14.34 proposing a grant or denial of peacetime POW status for concurrence by an authorizer. The Director of the Compensation and Pension Service must approve all regional office proposed determinations granting or denying peacetime POW status before action may be taken on the decisions.

b. **Approval Procedure.** The decision (without cover letter) and the claims folder shall be submitted to the Director, Compensation and Pension Service (211A), in every case. Use normal temporary transfer procedures on VA Form 00-7216a, Request for and/or Notice of Transfer of Veterans Records. Show routing to station "101 ATTN: 211A" in item 1A and include the legend "Peacetime POW Decision" in item 14.]

SUBCHAPTER II. HOMICIDE

14.06 JURISDICTION RELATING TO DETERMINATIONS

Whether a claimant or beneficiary wrongfully and intentionally caused the death of a veteran or another beneficiary is a question of fact which affects the right of a claimant to VA benefits. It is a question for determination of the Adjudication Division to be made in the format provided in paragraph 14.34 for approval by the Adjudication Officer who may delegate this authority to a supervisor not lower than a section chief.

14.07 DEVELOPMENT WHEN A CLAIM IS RECEIVED AND DEATH IS A HOMICIDE

a. **General.** Should the report of death indicate that the veteran's or a beneficiary's death is the result of a homicide, it will be necessary to ascertain that the claimant was not implicated in the killing before authorizing payment of death benefits. The development necessary will be governed by the circumstances in each case and ordinarily will be accomplished by correspondence with the police, sheriff, coroner, prosecuting attorney, clerk of the court, or other persons having knowledge of the circumstances prior to a request for field examination.

b. **Correspondence.** In many instances, it may be determined by inquiry to the local sheriff or police eliciting that the claimant was not or could not have been implicated, even though the identity of the person or persons responsible for the death has not been established. In such event, no further development will be required with respect to the claimant who was the subject of the inquiry.

(1) Correspondence to the claimant or persons outside the VA requesting information in connection with death by homicide should be carefully worded in order to avoid any inference that the VA suspects or implies that the claimant or any other particular person may be guilty or be implicated in the homicide.

(2) When there is evidence or information connecting the claimant with the homicide, further development by field examination will be undertaken to obtain all the facts.

However, copies of grand jury records should not be requested under any circumstances, either by letter or field examination.

c. **Field Examinations.** In requests for field examinations, it may be necessary to request the examiner to review the court records to obtain pertinent information from recorded testimony at a trial as well as names of witnesses. Transcripts of recorded testimony will be requested only in extreme cases where the question cannot otherwise be resolved.

14.08 EFFECT OF ADVERSE FINDING ON THE VARIOUS CLASSES OF CLAIMANTS OR BENEFICIARIES

a. **Wrongful and Intentional Killing of Veteran**

(1) **By Widow(er).** When the veteran's death is wrongfully and intentionally caused by the widow(er), the claim will be disallowed. Any award of death benefits to the veteran's children will be in an amount which would have been payable to them if they had been the sole original beneficiaries.

(2) **By Child—Widow(er) Entitled.** When the veteran's death is wrongfully and intentionally caused by a child, the widow(er) may be awarded additional death benefits on account of the child so long as the widow(er) is entitled to benefits and retains custody of the child.

(a) The question as to whether payment to the child might be barred because the child caused the death of the veteran is immaterial when the child is in the custody of the widow(er), since, under such circumstances, it is the widow(er) who is entitled and the child has no right or title to any part of such benefits.

(b) If the child is not in the widow(er)'s actual or constructive custody the widow(er) will be paid the amount which would have been payable to her if that child did not exist (except for the purpose of determining the applicable income limitation when pension is payable under the laws in effect prior to June 1, 1960). Similarly, the rates payable in awards to other children entitled to an apportioned share will be determined as though this child did not exist.

(3) **By Child—No Widow(er) Entitled.** When death is wrongfully and intentionally caused by a child and death benefits are claimed by or for the child in its own right, the claim will be disallowed. The rates for other surviving children, if any, will be correspondingly increased as though the child who did the wrongful act did not exist.

(4) **By Parent.** When death is caused by a parent, that parent's claim will be disallowed. The other parent, if any, shall be paid the amount which would have been payable if that parent had been the sole original beneficiary.

b. **Wrongful and Intentional Killing of Beneficiary by a Beneficiary.** The rule that a wrongdoer may not profit by a wrongful act is equally applicable to a beneficiary of death compensation or pension, DIC, and accrued

benefits, who wrongfully and intentionally caused the death of another beneficiary. The beneficiary's entitlement as a dependent of the deceased veteran is not affected, but [the dependent] may not obtain any increase that may otherwise be payable as the result of the other beneficiary's death.

[(1)] Consequently, when a veteran's child in receipt of death [benefits] is wrongfully and intentionally killed by another child also receiving such benefits, the child who caused the death is precluded from receiving *any increase* that would have been payable by reason of the discontinuance of benefit payments to or on account of the deceased child.

[(2)] Similarly, a parent is precluded from receiving an increase in death compensation or DIC as a sole surviving parent or from initially receiving the rate as a sole surviving parent, when he [or she] wrongfully and intentionally caused the death of the other parent entitled to death compensation or DIC.

c. **Accrued Amounts.** The rules stated above for the various classes of beneficiaries are equally applicable to claimants for accrued amounts and lump sums payable under 38 U.S.C. 3021, 3203(b)(1). Since payment of accrued amounts is governed by a succession of preferred beneficiaries, the wrongful and intentional killing of a preferred beneficiary by one in the next lower order of preference will bar any payment of the accrued amount to the wrongdoer; or, if in the same class of beneficiaries, the payment of an increased share.

14.09 FACTS TO BE CONSIDERED IN A WRONGFUL AND INTENTIONAL KILLING

a. **Definition.** For adjudication purposes, a wrongful and intentional killing is one in which the claimant or beneficiary caused the death of the veteran or another beneficiary without justification or excuse. Justification or excuse may be found, if it is established that the death was the result of an accident, or the killing was the result of self-defense, or accomplished while the claimant was insane.

b. **Accident.** Death may be found to have been caused by an accident when it can be established that the chain of circumstances causing the fatality was not set in motion for the purpose of causing death or with the intent to kill.

c. **Self-Defense**

[(1) It may be found that the claimant acted in self-defense and that the death occurred as a result of the claimant's action to protect him/herself if it is shown:

(a) That the claimant suffered an immediate fear of loss of life, incest or other serious bodily harm by reason of threatening acts of the deceased;

(b) There was no logical avenue of escape or retreat, and

(c) The deceased was in a position to and had the apparent means by which to accomplish the crime.

(2) Adjudication personnel must examine and weigh all facts and circumstances surrounding the killing, regardless of the action taken by civil authorities to ascertain whether the claimant's allegation of self-defense is sustained by the information or evidence available.]

d. **Insanity.** If the claimant or beneficiary caused the death of the veteran or another beneficiary and it is established that such act was perpetrated while insane, the killing will not bar the claimant from receiving death benefits.

[(1) If the question of the claimant's sanity at the time of the killing is [determined] in a judicial proceeding connected with the trial on the criminal charge, the VA will accept such adjudication without further development, however;

(2) [When a judicial determination] of insanity [is] made at or before a trial without any determination as to the sanity of the claimant *at the time of the killing*, it will be necessary for adjudication personnel to obtain all the evidence and information available with respect to the circumstances surrounding the killing and the mental condition of the claimant at the time of the killing.

(a) The test generally applied is whether, at the time of commission of the act, the party accused was laboring under such a defect of reason, from disease of mind or mental deficiency, as not to know the nature and consequence of the act [ ], or

[(b) If known], that the claimant did not [perceive the act] was wrong.

(3) When there is a question as to the claimant's sanity at the time of the killing, the case will be submitted to the rating board for a [memorandum] rating [ ] after development has been completed. Unless reversed on appeal, the determination of the rating board will be conclusive as to the question of the claimant's sanity or insanity at the time of the killing. (See also pars. 14.05 and [55.01d])

14.10 PARTICIPATION IN WRONGFUL AND INTENTIONAL KILLING

If it is established as a fact that the claimant procured, encouraged, or induced another to take the veteran's or another beneficiary's life, or participated as an accomplice in the homicide, or assisted in the planning or preparation leading to the homicide, or otherwise aided and abetted the person causing the death, the benefits that might otherwise be payable may not be paid to such claimant.

14.11 EFFECT OF JUDICIAL PROCEEDINGS ON A VA DETERMINATION

a. It is well recognized that the rules of evidence, practice, and procedure in a criminal proceeding differ from those of a civil action so that an adjudication in the one is not decisive as to the other. Thus, in a criminal proceeding, guilt must be proved beyond a reasonable doubt, whereas, in a civil action, the issue is determinable upon a preponderance of evidence. The guilt or innocence of a claimant accused of feloniously or intentionally causing the death of the veteran or another beneficiary is a question of fact which affects the right of the claimant.

[(1) The VA has the power to determine this fact in any given case, and, if it is concluded upon the preponderance of evidence that the accused is guilty, such finding will bar the claimant's right to benefits independently of any verdict in a criminal court.

(2) For administrative purposes, if a claimant has been convicted, no further effort will be made to develop the case, and the verdict of the court will be accepted to bar entitlement to death benefits.]

b. [If] a claimant is acquitted or a conviction in a lower court is reversed on appeal and the claimant has not again been brought to trial, it will be necessary to develop the facts in the case for the purpose of making a determination. Frequently, law enforcement officials are satisfied in their own minds that a person is guilty but cannot obtain sufficient evidence to establish guilt beyond a reasonable doubt. Consequently, in some cases, persons suspected of homicide are not brought to trial. In such cases, regardless of the action of the grand jury, coroner, prosecuting attorney, or the police, the facts surrounding the death will be developed for the purpose of making a determination.

14.12 EFFECT OF INSURANCE INTERPLEADER ON CLAIMS FOR OTHER BENEFITS

[a. When] the claimant for death compensation or pension, DIC or accrued amounts is also a beneficiary of insurance and the evidence indicates that the claimant may have participated in the killing of the person on account of whose death both benefits are payable, final determination on such claims will be deferred pending submission of the case to the General Counsel to determine the propriety of filing a bill of interpleader for insurance purposes.

[b.] Although [ ] the decisions of the Administrator of the VA are final [on matters of compensation, pension and DIC,] it is the policy of the VA to give careful consideration to the findings of fact and conclusions of law of the court in determining the rights of the claimant to the benefit claimed. (Also see par. 36.10)

14.13 DISALLOWANCE NOTICE LETTER

The letter of disallowance should be worded substantially as follows to avoid any inference or charge of guilt or implication in the homicidal death of the veteran:

> "Based upon the evidence of record, it has been determined that the veteran's death was incurred under such circumstances as to preclude the payment to you of VA benefits based on that death."

SUBCHAPTER III. PRESUMPTION OF DEATH AFTER 7 YEARS UNEXPLAINED ABSENCE

14.14 AUTHORITY TO APPROVE FINDING OF DEATH UNDER VAR 1212

The Adjudication Officer has the authority to approve findings of presumptive death under VAR 1212 [(38 U.S.C. 108)] on the basis of continued and unexplained absence for 7 years. This authority may be delegated to supervisors not lower than a section chief. (See par. 14.25a)

14.15 GENERAL PRINCIPLES

a. **Applicability.** The following general principles are for consideration in applying the provisions of the law. Their force and applicability will be governed largely by the circumstances of the particular case.

b. **Absence from Last Known Residence.** It must be shown that the individual has been absent without explanation from [the] last known residence. The unexplained absence for 7 years which will warrant the presumption that a person is dead means absence from [the] place of residence–his[/her] home, with which [communication would ordinarily be maintained] or to which he[/she] would return if [ ] alive. The presumption usually does not arise [when], under all circumstances, it is improbable that the person, if living, would communicate with home.

c. **Continuous Absence.** The continued staying away, rather than the departure alone, must be unexplained. This involves consideration of the habits and attachments which normally control the conduct of the individual. If [the individual] was a fugitive from justice, in serious domestic or financial difficulties, or estranged from [a spouse] and family, or if [the] home-life was such as would [be indicative of willful desertion,] the continued lack of communication generally would not be [a] basis for presuming death.

d. **Search for Absentee.** Evidence with respect to any searches conducted by or on behalf of the relative to locate the missing person is necessary in most cases. Failure to have made inquiry from all reasonable sources might indicate the claimant's lack of interest to the extent of raising the inference that the missing person also was disinterested and in all probability would not communicate with [the] family.

e. **Court Decisions.** The laws of the State in which the absentee resided are not controlling in the application of the presumption. However, [consideration] will be given to a declaration of death by a court of competent jurisdiction, [and the available evidence before the court,] if based substantially on these principles. In all such cases the decree or [a] certified copy [ ] will be obtained, together with available evidence of the facts upon which the court made its findings.

f. **Life Expectancy.** [It] *need not be shown* for the purpose of a finding based on an unexplained absence that the missing individual, if alive, would have attained or exceeded the ordinary duration of human life. [However, even when the absence is explained a presumption of death *may be based* thereon when all the criteria set forth in paragraph 14.16b are met.]

g. **Cause of Death.** Although [a finding of] the *fact* of death may be [made] as provided [under VAR 1211(F) or presumed under VAR 1212,] there is no *specific* provision for presuming the *cause* of death.

[When, however, by reason of the type and severity of an established service-connected disability, it may reasonably be accepted as a principal or contributory cause of death, the case will be referred to Central Office (212A). (See also par. 14.25b re rating for death pension and par. 56.11 re rating on cause of death.)]

h. **Date of Presumed Death.** The date of presumed death will be the end of the 7-year period following the date the individual was *last known* to be alive. [(See par. 14.26b re effective date of death awards.)]

14.16 EXPLAINED ABSENCE

[a. **General.** When an] individual's absence is explained [by the evidence of record,] development will not be undertaken or if initiated, will be discontinued. [A memorandum finding will be made as prescribed (par. 14.26a(2)) and payments if any, under VAR 1656 allowed to continue.

b. **Exceptional Cases.** There can be exceptional cases in which death may be presumed notwithstanding an "explained" absence *provided ALL* the following conditions exist.

(1)] The veteran filed to claim benefits to which apparently entitled under the law;

[(2)] The veteran, if alive, would have considerably exceeded the ordinary duration of human life, and

[(3)] No evidence of the existence of the veteran has been received after diligent search.

[c. **Future Controls.** When an absence is "explained," and the award (par. 24.09) allowed to continue under VAR 1656, it may be necessary, when the facts and circumstances so indicate, to establish a future control for a time when the conditions of subparagraph b will have been met.]

14.17 REQUIREMENTS PRECEDING DEVELOPMENT

a. [**Time Limitation.** Development for consideration of the presumption of death will not be initiated until the expiration of the control on an award made under VAR 1656 to a dependent or an award at only the insurance premium. (See par. 24.09.)

b. **Award Status.** No action will be taken to interrupt payments under the award to the dependent or the record purpose award at the insurance premium rate pending completion of review and determination for presumption of death.

c. **Development Required.** When evidence of record does not establish an explanation for a veterans absence, and the 7-year presumptive period has expired, VA Form 21-1775, Statement of Disappearance, will be sent to the widow(er) or child(ren) or to the next of kin or insurance beneficiary with instructions for completion as an informal claim (See par. 14.18). VA Form 21-534, Application for Dependency and Indemnity Compensation or Death Pension by Widow or Child will *not* be furnished until a finding of death is made. (See also par. 14.25b re need for pension rating.)

(1) The claimant will be informed that VA Form 21-1775 must be completed to determine continued entitlement and that failure to do so will result in the termination of benefits.

(2) If the claimant fails to respond following the expiration of the 60-day control period, benefits will be terminated effective date of last payment.

(3) The claimant will be advised of such termination, the reason(s) for, and furnished information concerning their appeal rights.

14.18 DISALLOWANCE OF CLAIMS WITHOUT DEVELOPMENT

Unsolicited claims will be disallowed without development of evidence toward a presumption of death if the benefits claimed would not be payable (e.g., legal bar, unfavorable rating decision, etc.). The disallowance letter (dictated) will include the following statement, with appropriate modification as may be required:

"This denial of your claim does not imply that the veteran's death has been established, or may be presumed, on the basis of the evidence of record."

14.19 INITIAL DEVELOPMENT

Development will be required when evidence of record does not establish an explanation for a veteran's absence, and the 7-year presumptive period has expired.

a. In developing the evidence required to establish death, it is first necessary to ascertain whether the individual's absence is unexplained. For this purpose, three VA Forms 21-1775, Statement of Disappearance, will be sent to the surviving spouse or child(ren) or to the next of kin or insurance beneficiary for completion by each of the following:

(1) The claimant.

(2) The absentee's last employer.

(3) A disinterested person who knew the missing individual and the facts surrounding the disappearance.

b. The claimant will be informed that VA Form 21-1775 must be completed to determine continued entitlement and that failure to do so will result in the termination of benefits.

(1) If the claimant fails to respond following the expiration of the 60-day control period, benefits will be terminated effective date of last payment.

(2) The claimant will be advised of such termination, the reason(s) for, and furnished information concerning appeal rights.

c. VA Form 21-534, Application for Dependency and Indemnity Compensation or Death Pension by Widow/er or Child, will *not* be furnished until a finding of death is made. VA Form 21-1775 completed by the claimant will be accepted as an informal claim.

d. All leads will be developed by the Adjudication Division, and by referral to the Veterans Services Division for assistance, including such field investigation as may be deemed advisable.

e. [The Adjudication Division will be responsible for contacting the Social Security Administration in order to ascertain whether any wages have been reported within the past 7-year period or if social security benefits are being paid to the claimant.

(1) The request for that information should be submitted to the Office of Regulations, SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

(2) The request should contain a brief explanation of the reason for the request and reasonably identify the individual being inquired about and the information desired, including:

(a) The individual's complete name, date of birth, and SSN (social security number); or

(b) If the individual's SSN is not known, then the parents' names (including the mother's maiden name) and the place of birth should be provided in addition to the individual's name and date of birth.

f. Concurrently with other development, the Assistant Inspector General for Investigation (51) will be requested by letter to make an FBI and passport inquiry as well as to include the veteran's name in the missing veteran letter.

(1) The information furnished must include all of the following:

Name

Date and place of birth

Social security number

Dates of military service

Service number

(2) In addition, the information must include as many of the following items as known:

Insurance numbers

Race

Personal description

Known addresses

Occupation

Character of discharge

Parents' names and addresses (if living)

Spouse's name and address

Children's name and addresses

Guardian's name and address (if applicable)

Date of disappearance and circumstances surrounding disappearance.

(g.) At any stage of development, even though there is no evidence showing definitely that the individual is alive, a determination may be made that the absence is explained, if the evidence discloses an explanation of the absence. (See par. 14.16.)

14.20 REFERRAL TO CENTRAL OFFICE

[When the veteran's absence has been determined to be continuous and unexplained as required in paragraph 14.25 and a finding of death made and award action taken, the claims folder will be forwarded to Compensation and Pension Service, Central Office (212C) for administrative review.]

14.21 (Deleted.)

14.22 (Deleted.)

14.23 (Deleted.)

14.24 (Deleted.)

14.25 FINDING OF CONTINUOUS AND UNEXPLAINED ABSENCE

a. **General.** If, following the development of evidence, a presumption of death after 7 years' unexplained absence is established a formal finding of continuous and unexplained absence will be prepared for the signature of the approving authority (see par. 14.14) in accordance with the format prescribed in paragraph 14.34.

b. **Cases Requiring Rating Decisions.** When the veteran's death is based on a finding of presumptive death, and entitlement for death pension is based on the service of a veteran who served less than 90 days in a period of war, before any application for death benefits is invited, the case must be submitted for rating decision. The rating board will determine whether the veteran was discharged for a service-connected disability or at time of discharge had a service-connected disability which would have justified a discharge for disability (par. 56.06). Only upon a favorable decision will VA Form 21-534 be sent to the surviving spouse or child(ren). (See also par. 56.11.)

c. **No Entitlement to Death Benefits.** If following a finding of presumption of death based on 7 years' unexplained absence, death benefits would not be payable, such as when there is a legal bar, or unfavorable rating decision, no death claim will be invited. (See also par. 14.18 re unsolicited claims.)

d. **Action Upon Receipt of Formal Death Claim.** When following a finding of presumption of death and VA Form 21-534, is received, award action, if in order, will be taken as set forth in paragraph 14.26b following referral for XC-procedure.

14.26 DISPOSITION OF FORMAL DEATH CLAIMS

a. **Disallowances.** When disallowance of a formal application is in order, VA Form 21-523, Disallowance—Disability or Death Claim, will be prepared.

(1) **Individual Alive.** If, at any stage of development, the evidence definitely discloses that the individual is living or was alive at any time within less than 7 years, the claim will be disallowed without the preparation of a factfinding memorandum such as that required below. The claimant will be informed in the disallowance letter as to the last date the individual was shown to be alive, but that the source of such information cannot be disclosed by the VA nor other information given concerning the veteran's existence or whereabouts. (See also par. 14.27 re cancellation of XC-procedure.)

(2) **Absence Explained.** If the claim is not subject to disallowance as provided in subparagraph (1) above and the evidence does not warrant a finding of continued and unexplained absence for 7 years, a memorandum finding will be prepared [ ] in accordance with paragraph 14.34 and the claim will be disallowed.

b. **[Termination of Running Awards.** Following a finding of presumptive death, action to terminate awards under VAR 1656 will be taken as follows:

(1) **Awards Involving Dependents.** VA Form 23-7672, Notice of Death Worksheet will be prepared to terminate the veteran's record purpose and the apportionee awards effective as of date of last payment following notification of all payees and satisfaction of the requirements of "due process" (see par. 14.36).

(2) **Insurance Awards.** When there is only a record purpose insurance award under VAR 1656, NOD will be prepared and made input without need for deferring because of "due process".

NOTE: A copy of the finding of presumptive death will be furnished the Insurance activity in all cases when there is an insurance deduction.

c. **Effective Dates of Death Awards.** The effective date of a death award following a decision of presumed death will be as follows:

(1) When an increased rate is payable, the increased benefits will commence effective the date of presumed death (i.e., 7 years after disappearance), subject to any offset that the award under VAR 1656 may have created.

(2) When a decreased rate is payable, the decreased benefits will be made effective after satisfying due process requirements as of date of last payment.]

14.27 CANCELLATION OF XC-PROCEDURE

a. **[Running Awards to Dependents or for Insurance.** No action will be taken to XC a case or, if initiated, XC-procedures will be canceled when an award under VAR 1656 is to be continued pending final determination.] (See par. 31.01d.)

b. [(Deleted by change 132.)

c. **Referral to Administrative Activity.** When cancellation of the XC-procedure is in order, the folder will be forwarded to the Administrative activity to cancel the XC-procedure and to take appropriate action with respect to the files, if any, which may have been combined in the XC-folder.]

14.28 [(Deleted by change 132.)]

SUBCHAPTER IV. FINDING OF FACT AND DATE OF DEATH

14.29 EVIDENCE REQUIREMENTS

In any case in which the death of the person involved cannot be established by any of the evidence outlined in VAR 1211 (A) through (E) and it is indicated that the death occurred under circumstances which precluded recovery or identification of the body, the fact of death will be established in accordance with VAR 1211(F) by the best obtainable evidence. Such evidence should consist of:

a. The claimant's certified statement setting forth the circumstances under which the missing person was last seen, and the known facts concerning [ ] death and

[(1)] The certified statements of persons who witnessed the accident in which the missing person is alleged to have perished, setting forth the full circumstances or,

[(2)] When the testimony of eyewitnesses is not obtainable and the fact of death is determinable on circumstantial evidence, the certified statements of persons who have the most authentic information available concerning the death.

[b.] Official reports of any Government agencies which conducted investigations [(which will be persuasive but not controlling).]

14.30 DEATHS IN A COMMON DISASTER

a. **General.** In those cases in which a missing person is alleged to have died in a common disaster and the body has not been recovered or identified, evidence will be requested to show as definitely as possible that the missing person was at the scene of the accident and in imminent peril at the time the accident occurred and that [the] disappearance was attributable to the catastrophe. An effort will be made to obtain:

(1) The claimant's certified statement setting forth the reason for believing that the missing person was at the scene of the accident at the time the accident occurred.

(2) The certified statements of individuals who saw the missing person at the scene of the accident shortly before the accident occurred or [ ] under such circumstances that it appeared unlikely that [survival was probable] (e.g., the certified statement of a fellow worker who left [the] place of employment shortly before the accident and who saw the missing person at work, or of an individual who saw the missing person trapped in a burning building).

(3) The certified statement of the employer [if the accident occurred incident to employment,] giving names of persons who were believed to be on duty at the time the accident occurred to support other evidence tending to show that death occurred in the disaster.

(4) [When] the missing person is not shown to have been [ ] at the place the disaster occurred, certified statements should be obtained from friends, neighbors, and other persons who may have observed [the individual], outlining [the] activities on that day, setting forth fully their reasons for believing that [death] may have [occurred] in the disaster.

b. **Two or More Veterans Involved.** The provisions of this paragraph are applicable when two or more veterans are missing as the result of a common disaster or accident occurring after separation from service. (See par. 34.03 for common accidents occurring in service.)

(1) When a claim is filed and information of record indicates another veteran is involved, action will be initiated to determine the existence, location and claims status of a claims folder for the other veteran.

(a) If a claim has been filed in the other case, joint development under [this subchapter] will be required.

(b) If there is a claims folder for the other veteran located in another office, in which claim has been filed and development under paragraph 14.29 initiated, that office will be given temporary jurisdiction of both folders for simultaneous adjudication.

(c) If a claim has been adjudicated in the other case and a finding made (favorable or unfavorable), it will be obtained (on temporary transfer) for review with the pending case and such action as may be necessary.

(d) If no claim has been filed in the other case, it will be flashed to show a claim has been filed in the pending case. In the absence of a claim in the other case, no further action will be required, except for filing a copy of the finding, which will be furnished as provided in the following subparagraph, when made in the pending case:

(2) When a formal finding is made as prescribed in paragraph 14.32, signed copies of the finding will be prepared for each related claims folder including any in which a claim was disallowed for failure to furnish evidence or other reason and cases in which no claim was filed.

(3) Subject to the provisions of 38 CFR 3.105(a) and (b), a finding of death previously made for another veteran in the same disaster or accident is determinative as to the facts cited in the finding insofar as they establish the circumstances of the disaster or accident, but not as to the specific facts relative to the death or date of death of any other veteran in the accident.

14.31 ACCOUNTABLE ABSENCE

A finding of fact of death must be made on the weight of evidence. Due consideration will be given to any circumstance, such as marital or financial difficulties, which may be developed showing that the disappearance may have been voluntary. The existence of such circumstances will not preclude a finding of fact of death unless it is demonstrated that the person whose death is alleged had an adequate opportunity to escape death and had reason to choose to disappear, under which circumstances, the provisions of paragraph 24.09 will be for application when the veteran is the missing person.

14.32 PREPARATION AND APPROVAL OF FINDINGS OF FACT AND DATE OF DEATH

a. **Officials Authorized To Approve Findings.** The Adjudication Officer has the authority to approve findings of fact of death. This authority may be delegated to supervisors not lower than a section chief.

b. **Preparation of Supporting Documents.** A formal finding of fact of death will be prepared for the signature of the approving authority in accordance with the format prescribed in paragraph 14.34.

c. **Determining Date of Death.** As required by the circumstances, the date of death may be established as the date the deceased was last seen alive, the date the body was found or any time between those dates.

SUBCHAPTER V. ADMINISTRATIVE DECISIONS

14.33 TYPES OF CASES INCLUDED

When required by a VA Regulation or other provision of this manual, a memorandum finding for inclusion in the folder will be prepared in accordance with paragraph 14.34. These include, but are not limited to, the following issues and unless otherwise noted whether the decision is favorable or unfavorable:

a. Common-law marriage. (Pars. 8.03a and 8.04c)

b. Tribal marriage. (Par. 8.05a)

c. Inference of marriage. (Par. 8.06)

d. Deemed valid marriage. (Par. 8.07)

e. Annulments. (Par. [8.09])

f. Continuous cohabitation—unfavorable only. (Par. 8.11)

g. Parental relationship—unfavorable only, unless contested. (Par. 8.18)

h. Corpus of estate, if disallowed [or if allowed and estate is $35,000 or greater.] (Pars. 8.20, 9.08[f] and 9.27)

i. Dependency—unfavorable only [or if favorable and estate is $35,000 or greater.] (Par. 8.20)

j. Child by adoption—unfavorable only, unless decree questionable. (Par. 10.03)

k. Stepchild relationship—unfavorable only. (Par. 10.04)

l. Illegitimate child—unfavorable only. (Par. 10.05)

m. Character of discharge. (Par. 14.01)

n. Line of duty. (Par. 14.03)

o. Willful misconduct and vicious habits. (Par. 14.04)

p. Homicide. (Par. 14.06)

q. Presumed death. (Par. 14.25, if unexplained absence; par. 14.26a(2), if explained.)

r. Findings of fact and date of death. (Par. 14.32)

s. Reversal of prior determination. (Pars. 14.35 and 48.09)

t. Fraud. *NOTE: There are no dual penalties of forfeiture of benefits and punishment under penal statutes for fraud where the offense is committed within the jurisdiction of a Federal court and the claimant remains within the jurisdiction of a "State" until expiration of the statute of limitations for prosecution. Therefore, the procedures in paragraph 20.03 are not applicable for cases of fraud within the United States. However, application of due process (par. 14.36) should be followed in such cases.*

u. Special apportionment under 38 CFR 3.451. (Pars. 26.03 and 39.10)

v. Contested claims. (Par. 36.07)

w. Cessation of marital relationship. (Par. 8.10)

x. Special type of conveyance under 38 CFR 3.808. (Par. 30.06g)

y. Administrative error. (Par. 14.35b and [48.09])

z. Peacetime POW Status Claims. (Par. 14.05.1)

14.34 PREPARATION AND APPROVAL OF AUTHORIZATION DETERMINATIONS

Unless otherwise specifically provided, formal decisions will be prepared by an adjudicator for approval by a section chief. This does not preclude the Adjudication Officer from locally requiring additional signatures of concurring officials at a lower level. Due to the importance of administrative decisions and the fact that they are subject to review by beneficiaries and their representatives, all formal decisions, including special apportionment decisions, are to be typewritten in original only in the following format or on VA Form 21-441, Special Apportionment Decision, as appropriate.

(Designation of VA Office) (File Number)

(Location of VA Office) (Veteran's Name)

ADMINISTRATIVE DECISION

ISSUE:

(State the question at issue.)

FACTS:

(Furnish a brief, concise and orderly statement of the pertinent facts of record. Do not quote verbatim and at length from items of evidence. Summarize.)

DISCUSSION:

(Set forth reasoning influencing conclusion reached. Citations of regulations, precedents, etc., relied on should be shown.)

CONCLUSION:

(Succinctly state the decision.)

Submitted: _____ (Date) _____

Concurred: _____ (Date) _____

Approved: _____ (Date) _____

14.35 REVERSAL OF PRIOR DETERMINATION

a. **General.** Whenever a determination has been made, it is binding unless reversed on the basis of new and material evidence or clear and unmistakable error. Reversals on the basis of clear and unmistakable error will cite 38 CFR 3.105(a) and be certified by the Adjudication Officer or designee to the effect that the entire record has been reviewed and a clear and unmistakable error found to exist.

b. **Excessive Payments.** When it is discovered that benefits exceeding entitlement have been awarded, adjustment of awards will be made in accordance with 38 CFR 3.500(b)(1) or (2) as applicable. Except as provided in cases of fraud and administrative error, the documentation for the following determinations will be met by the completion of the authorization form (award or stop award) with identification of the error, responsibility and amount involved and citation of the applicable VA regulation as authority in "Remarks." Such award or stop award action will require the signature of both an adjudicator and an authorizer.

(1) **Administrative Error.** When the excessive payment was due solely to an erroneous award based upon administrative error or error of judgment, the award will be reduced (or terminated) as of date of last payment, pursuant to 38 CFR 3.500(b)(2). For such cases an administrative decision will be required. Where the amount of the erroneous payment is less than $1,000, the decision will be prepared for approval by a section chief; where the erroneous payment is $1,000 or greater the decision will be prepared for approval by the Adjudication Officer. An extra copy of the authorization action will be maintained in the office of the Adjudication Officer for a period of 1 year from the date of the determination and then disposed of in accordance with Records Control Schedule VB-1, part I, item [08-038.000.]

NOTE: Excessive payments not based upon an award action, such as those made because of the delay required for administrative procedures in reduction or termination of an award (including those related to receipt and processing of IQ's at a Special Processing Unit and/or a regional office) will NOT be considered to be due to an erroneous award based upon administrative error.

(2) **Payee Error.** When the excessive payment was due to an erroneous award based on an act of commission or omission by the beneficiary or with his or her knowledge (as distinguished from "fraud"), adjustment (or termination) will be effected as of the commencing date of the award or other effective date required under the provision of law or regulation governing entitlement, pursuant to 38 CFR 3.500(b)(1). Payee error is involved in any excessive payment when a claimant negotiates a check in a patently excessive amount and adjustments are governed by the same provision of the regulations.

(3) **Erroneous Computer-Generated Awards.** When computer processing of an automated legislative increase results in payment of more than the proper amount of pension and income questionnaire processing by an automated award (COMPUT or IQ Scan Code Sheet) improperly continues an award or effects an erroneous rate in excess of the amount payable although the payee correctly reported income or status change, the award will be reduced or terminated as of date of last payment under 38 CFR 3.500(b)(2). Excessive payments due to mechanical malfunction or programing error, etc., unassociated with an award action or the actions described in this subparagraph do not constitute administrative error under 38 CFR 3.500(b)(2).

(4) **Determination of Administrative or Payee Error.** The determination whether an excessive payment based upon an erroneous award is the result of administrative error or payee error will be made only by authorized personnel of the Adjudication Division. Upon a finding that an erroneous award was due to administrative error or error of judgment, the payment status of the account must be carefully reviewed to determine the earliest factual date of last payment. This requires that efforts be made to obtain the return and cancellation of nonnegotiated or undelivered checks before a final determination of the effective date of reduction or discontinuance is made.

c. **Determinations Based on Fraud.** See paragraph 20.02

SUBCHAPTER VI. DUE PROCESS

14.36 APPLICATION OF DUE PROCESS IN PENSION, DIC AND COMPENSATION CASES

a. **General.** The due process provisions of 38 CFR 3.103 require that notice and opportunity for hearing be given a claimant at some time in the proceedings. In order to conform with constitutional requirements, certain cases require predetermination notice and opportunity for hearing before an adverse action is to be taken.

b. **Cases Requiring Predetermination Notice.** Before taking an adverse action on a running award; i.e., reduction suspension or termination, the payee or his/her fiduciary will be advised of the proposed adjudicative action, the reason therefor and of the right to a hearing prior to effecting such action, when:

(1) A determination is made to reduce or discontinue a pension evaluation based on evidence of record of reduced disability or regained employability; or

(2) The evidence under consideration is subject to more than one interpretation and requires further clarifying development; or

(3) The action is based on third-party statements [. The term "third-party statements" includes information received from one of our computer matches with the Social Security Administration, Department of Labor, Office of Personnel Management, Railroad Retirement Board, etc., or from Social Security's third-party query system]; or

(4) In DIC, death compensation and death pension cases involving more than one claimant, when a prima facie basis for the allegation or claim is established and adjustment action is required as follows:

(a) One claimant is receiving benefits and another claimant of the same class (e.g., two parties claiming as widow show possible entitlement to the same benefit).

(b) One claimant is receiving benefits and another claimant not in the same class, having concurrent or independent entitlement alleges and shows a possibility of nonentitlement as to the beneficiary currently being paid (e.g., children claiming benefits based on service of a parent and simultaneously showing a possibility of nonentitlement of a widow).

(c) A change in the factual basis for the grant of benefits is discovered (limited to relationship and marital status) normally requiring suspension or discontinuance.

c. **Distinguishing Cases for Application of General Criteria.** Predetermination notice will not be required when the decision is based solely on reliance on evidence submitted by the claimant; or when such notice could serve no useful purpose because it could not be communicated to the claimant. In these cases, current procedures for adjustment, suspension or termination continue:

(1) Adjustment or termination of pension or parents' DIC based on the claimant's self-reported annual income;

(2) Adjustment required by a claimant's report of change of status of dependents;

(3) Suspension or termination based on a report of death received from a reliable source;

(4) Suspension based on removal of claimant leaving no forwarding address;

(5) Other similar cases when the criteria set forth in subparagraph b do not govern.

(6) Adjustment or termination of compensation under 38 CFR 3.105(e). (But see par. 52.02 for 38 CFR 3.105(e) procedures that must be applied.)

d. **Notice of Disagreement Filed.** In cases not within the criteria of subparagraph b, if the claimant files a notice of disagreement *prior to the effective date of change*, the authorization action will be withheld and predetermination notice procedures will be utilized. If notice of disagreement is received *after the effective date of change*, current procedures for handling of a notice of disagreement will be followed.

e. **Deferral of Authorization Action.** When the predetermination due process procedure is required, authorization action will be deferred until a final determination is made.

(1) The case should be closely controlled so that if a request for a hearing or new evidence is not received within the notice period, immediate action at its expiration will avoid or diminish any overpayment.

(2) No withholdings or suspensions will be established until the expiration of the notice period or until a final determination is made.

(3) The control period for this purpose will be 45 days.

f. **Predetermination Notice of Due Process Rights.** The claimant will be informed by dictated letter of the proposed denial or change in the award, the effective date of rate change or termination which is proposed, and of the underlying reason(s). (See pattern letter, fig. 14-4.)

g. **Conduct of Hearings.** Hearings will be conducted by VA personnel who did not participate in the particular decision, and who will have jurisdiction over the subsequent decision. This requirement is waived when insufficient personnel are assigned to permit a hearing by qualified personnel other than those who made the decision about which the hearing is being conducted. The claimant will be afforded the right to question VA employees conducting the hearing and to cross-examine adverse witnesses. (See also par. 18.18.)

h. **Effective Dates.** The application of predetermination due process procedures may require continuance of payments beyond statutory reduction and termination dates. However, when indicated action is finally taken, statutory reduction and termination dates will be adhered to, even though such adherence results in the creation of overpayments.

i. **Appeal Procedures.** Following the expiration of the period of notice or when a final determination is made, the claimant will be advised of the decision and of his or her procedural rights. This will normally be done in connection with appropriate authorization action.

14.37 DUE PROCESS IN INCOMPETENCY DETERMINATIONS

a. **General.** Before a rating determination of incompetency is made (par. 12.05b), the requirements of "notice and hearing" must be satisfied, except as provided below. When sufficient evidence is of record to establish the necessary degree of probability that a payee-beneficiary is incapable of managing his or her own affairs including disbursement of funds without limitation, the notice of proposed rating and of opportunity for hearing as provided in paragraph 14.36 is required.

b. **Exception.** A payee beneficiary held by a court of jurisdiction to be incompetent or for whom a court having jurisdiction has appointed a guardian by reason of incompetency, will be deemed to have had notice and hearing under laws of the State and additional notice and hearing are not required.

c. **Notice.** When [you make] the preliminary rating in memorandum format (see par. 47.03) [send] notification of the proposed action [ ] to the beneficiary or, as specified below, to a custodian who may be recognized under 38 CFR 3.850(c). [As specified below, if the beneficiary is a patient in a medical center, send a copy of the notice to] the Chief Officer of the hospital or domiciliary in which the person is institutionalized. The notice will include:

(1) A short resume of the facts and evidence of record that would support a finding of incompetency.

(2) An explanation of the effect of such finding on payment of VA benefits.

(3) A statement of the right to submit evidence to show why the proposed action should not be taken, to have a hearing and to be represented, and information that:

(a) If a personal hearing to present evidence on the issue is desired, request should be made to the VA within 30 days. Claimants may bring witnesses and their testimony will be included in the record. The VA will furnish the hearing room, provide hearing officials, and prepare the transcript or summary of the proceedings but cannot pay any other expenses of the hearing since a personal hearing is held only upon request.

(b) The beneficiary may be represented, without charge, by an accredited representative of a veterans organization or other service organization recognized by the Administrator of Veterans Affairs, or may employ an attorney. If a representative has not been designated but is desired, the VA should be advised and the necessary forms will be furnished.

(c) If no action is taken either by submitting evidence or requesting a hearing within ~~30~~ 60 days, a decision as to competency will be made on the basis of evidence of record.

d. **Institutionalized Beneficiaries.** When the beneficiary is a patient in a [medical center] (including veterans in nonbed-care status, on authorized or unauthorized absence or a domiciliary member), [send the original notification of the proposed incompetency action to the beneficiary and send a copy of the notice] to the Chief Officer of the institution requesting that the patient [also] be informed orally about the proposed action and of due process rights by a psychiatric social worker or other professional staff member as designated by the Chief Officer of the institution. For veterans institutionalized by the VA, an appropriate entry describing the action will be recorded in the veteran's medical record.

e. **Noninstitutionalized Minors.** Notice will be furnished to any fiduciary previously certified by the VSO to receive payments because of the child's minority, otherwise, to a parent who may be recognized under VAR 1850(C).

NOTE: Discretion must be exercised in dealing directly with the veteran or other beneficiary as this type of notice could cause adverse effects.

f. **Conduct of Hearings.** Hearings will be conducted by the rating board members who will have jurisdication over the subsequent decision in accordance with the provisions of paragraph 18.18. Due to the nature of the hearings, latitude will be provided to allow participation and assistance to the beneficiary by next of kin or any other person of the beneficiary's choice present.

g. **Rating Procedure**

(1) **Preliminary.** When the evidence of record supports a probable conclusion of incompetency, the rating board will issue a rating in menorandum format proposing a change in competency status.

(2) **Final.** Following completion of the notice and hearing provisions cited here, the rating board will make a formal rating as to competency including therein all evidence (medical or lay) to support its decision. The beneficiary will be advised of the decision and of his or her procedural and appellate rights.

h. **Authorization Procedure.** Upon receipt of a rating proposing a change in competency status, the Authorization activity will notify the beneficiary, Chief Officer of the hospital or VA domiciliary, or custodian whichever is applicable, giving notice of the proposed action and informing him or her of the right to a hearing and of the right to submit any evidence which may be pertinent. The case will be controlled so that at the end of the notice period immediate rating action may be taken, if otherwise indicated.

i. **Notice of Disagreement.** If after any formal rating of incompetency, a notice of disagreement is received, a Statement of the Case will be prepared and sent to the beneficiary (fiduciary, if applicable) and his or her representative. VA Form 1-9, Appeal to Board of Veterans Appeals, will be enclosed with the Statement of the Case for use in completing the appeal, if desired. In preparing a Statement of the Case, careful consideration will be given any information that may be detrimental to the beneficiary's state of mind or other matters not to be disclosed (par. 18.09). A decision as to possible detriment will be supported by a physician's opinion and advice concerning the way considered most appropriate for communicating information directly to the beneficiary.

You have applied for _____
based upon military service. Entitlement to such benefits is contingent upon discharge from military service under conditions other than dishonorable.

If your service was terminated by an "other than honorable" discharge we are required to examine all relevant facts, including a report from the service department of the facts and circumstances leading to your discharge for the purpose of determining whether or not you were discharged under conditions other than dishonorable. If you received a "dishonorable" discharge, service records will not be routinely requested by the VA.

The determination made by the Veterans Administration is of the utmost importance to you. An unfavorable decision will not only result in the denial of the benefit you presently seek, but, in additional, it will bar entitlement to all gratutious VA benefits which you or your dependents may seek now or in the future based on this period of service.

The criteria on which all character of discharge determinations are made are contained in title 38 of the Code of Federal Regulations, section 3.12. A copy of this regulation is attached.

[For the purpose of determining whether or not you were discharged under conditions other than dishonorable, we are required to examine all relevant facts, including a report from the service department, of the events leading to the discharge. You should submit any evidence, contention or argument bearing on the issue that will present your side of the case. If the circumstances leading to your discharge involved frequent or prolonged periods of unauthorized absence, you should include a statement explaining the reason(s) for these absences.]

You may be represented, without charge, by an accredited representative of a service organization recognized by the Administrator of Veterans Affairs, or you may employ an attorney to assist you in prosecuting your claim. If you desire representation, let us know and we will furnished the necessary forms.

Although it is not required by law of regulations, you may have a personal hearing prior to the determination. If you desire a personal hearing to present evidence or argument on any point of importance in your claim, notify this office and we will arrange a time and place for the hearing. You may bring witnesses if you desire who have personal knowledge of the circumstances and their testimony will be entered in the record. The VA will furnish the hearing room, provide hearing officials, and prepare the transcript of the proceedings. No other expense connected with the hearing can be borne by the VA.

If we do not hear from you within 30 days we must assume you have no additional evidence to submit and do not desire additional time for presentation of your case. A decision will be made on the basis of evidence of record.

It is the regular policy of the VA to assist a claimant in developing the pertinent facts and to render a decision which grants every benefit that can be supported in law while protecting the interest of the Government. You may be assured that we will try to help you in every reasonable way so that a fair and impartial decision will result.

Attachment:
38 CFR 3.12

Figure 14-1. Character of Discharge Predetermination Notification

38 CFR 3.12 CHARACTER OF DISCHARGE

(a) If the veteran did not die in service, pension, compensation, or dependency and indemnity compensation is not payable unless the period of service on which the claim is based was terminated by discharge or release under conditions other than dishonorable. (38 U.S.C. 101(2)) A discharge under honorable conditions is binding on the Veterans Administration as to character of discharge.

(b) A discharge or release from service under one of the conditions specified in this [section] is a bar to the payment of benefits unless it is found that the person was insane at the time of committing the offense causing such discharge or release (38 U.S.C. 3103(b)).

(c) Benefits are not payable where the veteran was discharged or released under one of the following conditions:

(1) As a conscientious objector who refused to perform military duty, wear the uniform, or comply with lawful orders of competent military authorities.

(2) By reason of the sentence of a general court-martial.

(3) Resignation by an officer for the good of the service.

(4) As a deserter.

(5) As an alien during a period of hostilities, where it is affirmatively shown that the veteran requested his or her release. [See § 3.7(b).]

(6) By reason of a discharge under other than honorable conditions issued as a result of an absence without official leave (AWOL) for a continuous period of at least 180 days. This bar to benefit entitlement does not apply if there are compelling circumstances to warrant the prolonged unauthorized absence. This bar applies to any person awarded an honorable or general discharge prior to October 8, 1977, under one of the programs listed in paragraph (h), [of this section] and to any person who prior to October 8, 1977, had not otherwise established basic eligibility to receive Veterans Administration benefits. The term "established basic eligibility to receive Veterans Administration benefits" means either a Veterans Administration determination that an other than honorable discharge was issued under conditions other than dishonorable, or an upgraded honorable or general discharge issued prior to October 8, 1977, under criteria other than those prescribed by one of the programs listed in paragraph (h) [of this section]. However, if a person was discharged or released by reason of the sentence of a general court-martial, only a finding of insanity (paragraph (b)) or [a] decision of a board of correction of [ ] records established under 10 U.S.C. 1552 can establish basic eligibility to receive Veterans Administration benefits. The following factors will be considered in determining whether there are compelling circumstances to warrant the prolonged unauthorized absence:

(i) Length and character of service exclusive of the period of prolonged AWOL. Service exclusive of the period of prolonged AWOL should generally be of such quality and length that it can be characterized as honest, faithful and meritorious and of benefit to the Nation.

(ii) Reasons for going AWOL. Reasons which [are entitled to be given] consideration when offered by the claimant [ ] include family emergencies or obligations, or similar types of obligations or duties owed to third parties. The reasons for going AWOL should be evaluated in terms of the person's age, cultural background, educational level and judgmental maturity. Consideration should be given to how the situation appeared to the person [himself or herself], and not how the adjudicator might have reacted. Hardship or suffering incurred during overseas service, or as a result of combat wounds or other service incurred or aggravated disability, is to be carefully and sympathetically considered in evaluating the person's state of mind at the time the prolonged AWOL period began.

Figure 14-2. Attachment to Character of Discharge Predetermination Notification

(iii) A valid legal defense exists for the absence which would have precluded a conviction for AWOL. Compelling circumstances could occur as a matter of law if the absence could not validly be charged as, or lead to a conviction of, an offense under the Uniform Code of Military Justice. For purposes of this paragraph the defense must go directly to the substantive issue of absence rather than to procedures, technicalities or formalities.

(d) A discharge or release because of one of the offenses specified in this paragraph is considered to have been issued under dishonorable conditions.

(1) Acceptance of an undesirable discharge to escape trial by general court-martial.

(2) Mutiny or spying.

(3) An offense involving moral turpitude. This includes, generally, conviction of a felony.

(4) Willful and persistent misconduct. This includes a discharge under other than honorable conditions, if it is determined that it was issued because of willful and persistent misconduct. A discharge because of a minor offense will not, however, be considered willful and persistent misconduct if service was otherwise honest, faithful and meritorious.

(5) [Homosexual acts involving aggravating circumstances or other factors affecting the performance of duty. Examples of homosexual acts involving aggravating circumstances or other factors affecting the performance of duty include child molestation, homosexual prostitution, homosexual acts or conduct accompanied by assault or coercion, and homosexual acts or conduct taking place between service members of disparate rank, grade, or status when a service member has taken advantage of his or her superior rank, grade, or status.]

(e) An honorable discharge or discharge under [honorable] conditions issued through a board for correction of records established under authority of 10 U.S.C. 1552 is final and conclusive on the Veterans Administration. The action of the board sets aside any prior bar to benefits imposed under paragraph (c) or (d) [of this section].

(f) An honorable or general discharge issued prior to October 8, 1977, under authority other than that listed in paragraph (h)(1), (2) and (3) [of this section] by a discharge review board established under 10 U.S.C. 1553 sets aside any bar to benefits imposed under paragraph (c) or (d) [of this section] except the bar contained in paragraph (c)(2) [of this section].

(g) An honorable or general discharge issued on or after October 8, 1977, by a discharge review board established under 10 U.S.C. 1553 sets aside any bar to benefits imposed under paragraph (d) of this [section] when the following conditions are met:

(1) The discharge is upgraded as a result of an individual case review, and

(2) The discharge is upgraded under uniform published standards and procedures generally applicable to all persons administratively discharged or released from active military, naval or air service under conditions other than honorable; and such standards are historically consistent with criteria for determining honorable service and do not include any criterion for automatically granting or denying an upgraded discharge.

Figure 14-2. Attachment to Character of Discharge Predetermination Notification — Continued

However, an honorable or general discharge issued on or after October 8, 1977, by a discharge review board established under 10 U.S.C. 1553 does not set aside any bar to benefits imposed under subparagraph (c) of this paragraph.

(h) An honorable or general discharge awarded under one of the following programs does not remove any bar to benefits imposed by subparagraph (c) or (d) of this paragraph;

(1) The President's directive of January 19, 1977, initiating further action with respect to Presidential Proclamation 4313 of September 16, 1974, or

(2) The Department of Defense's special discharge review program effective April 5, 1977, or

(3) Any discharge review program implemented after April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval or air service under other than honorable conditions.

However, if a discharge review board established under 10 U.S.C. 1553 determines on an individual case basis, in the case of a person who was issued an honorable or general discharge under any such program after October 8, 1977, that an upgraded discharge would be awarded under standards conforming to subparagraph (g) (1) and (2) of this paragraph, that determination removes any bar to benefits imposed by subparagraph (d) of this paragraph.]

Figure 14-2. Attachment to Character of Discharge Predetermination Notification – Continued

[We have determined that your discharge from military service on _____ was issued under conditions which constitute a bar to the payment of VA benefits.]

As a consequence the period of service upon which that discharge was based does not qualify you for the benefit you applied for, or for any other gratuitous benefit under laws administered by the VA, [with the possibile exception of medical treatment for any disability or disabilities you incurred or aggravated during active service. If the need for medical treatment arises for such a service-related condition, you should apply to your nearest VA office or station with medical facilities. *(Substitute optional paragraph if chapter 17, 38 U.S.C. entitlement is not established (i.e., bad conduct discharge or statutory bar under VAR 1012(C)).]

This decision also has the effect of precluding entitlement to gratuitous VA benefits for your dependents and survivors.

*[*As a consequence the period of service upon which that discharge was based does not quality you for the benefit you applied for or for any other gratuitous benefit under laws administered by the VA.]*

If you believe our decision to be incorrect, please see the Notice of Procedural and Appeal Rights which is attached.

You also have the right to file a request for revision of the character of your discharge with the Service Department Discharge Review Board or to apply for correction of your military records by the Service Department Board for Correction of Military Records. If you desire such reconsideration, the enclosed DD Form 293 or DD Form 149, as applicable, should be completed and sent to the appropriate board at the address shown on the reverse side of the form.

Attachment:
VA Form 1-4107

Figure 14-3. Character of Discharge Post Decision Notification

GENERAL DUE-PROCESS PROVISIONS

"**Basic Rights.** The action proposed could result in denial, suspension, reduction, or termination of benefits. You have certain basic rights you may exercise before the proposed action is taken.

These consist of the right to submit additional evidence to show why the proposed action should not be taken, the right of a hearing and the right to be represented.

You have [30] days from the date of this notice to submit additional evidence or request a hearing; meanwhile, payments will continue at the present rate. You should be aware that deferring action pending a hearing could result in the creation of an overpayment which must be repaid. If you do request a hearing but desire to minimize any overpayment which could result, you may include a statement to that effect.

Personal Hearing. If you desire a personal hearing to present evidence or argument on any point of importance in your claim, notify this office and we will arrange a time and place for the hearing. You may bring witnesses if you desire and their testimony will be entered in the record. The VA will furnish the hearing room, provide hearing officials, and prepare the transcript or summary of the proceedings. The VA cannot pay any other expenses of the hearing, since a personal hearing is held only upon your request.

Representation. You may be represented, without charge, by an accredited representative of a veterans organization or other service organization recognized by the Administrator of Veterans Affairs, or you may employ an attorney or secure a local Legal Aid Service counsel to assist you with your claim; however, the services of an attorney are subject to a maximum fee limitation of $10, set forth in 38 U.S.C 3404(c). If you desire representation, let us know and we will send you the necessary forms. If you have already designated a representative, no further action on your part is required."

Figure 14-4. General Predetermination Notice

CHAPTER 15. TARGET AWARDS PROCEDURE

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CHAPTER 15. TARGET AWARDS PROCEDURE
SUBCHAPTER I. GENERAL

This chapter furnishes instructions relating principally to the preparation and processing of data for generation of compensation and pension awards under the Target data processing system. [Specific instructions relative to preparation and processing of awards in the Education System are provided in M22-2, part IV and those for the Vocational Rehabilitation and Counseling System are provided in M28-2.]

15.01 MAINTENANCE OF DATA IN MASTER RECORDS FILES

a. **General.** Knowledge of current data, if any, maintained on the Hines DPC computer magnetic tape records and Target disc file is essential for the proper entry of data and processing of awards. When determining the need for entry of specific data on any screen, it should be borne in mind that the underlying principle of computer processing assumes that, *unless changed by input or updating of future segments, data existing in a master record will be retained unchanged.* Detailed information as to the composition and content of master records will be found in MP-6, part IV, supplement No. 4.1, and codes used, in supplement No. 1.1. (See also app. C to this manual for tables of codes.) Basic system concepts include:

(1) Target processes with a disc file which is a duplication of data from the Hines master record. Therefore, it should be noted that when each cycle is run at Hines, the master record data on the Target disc file is not current with the Hines master record until the cycle update of the Target disc file is accomplished. To check if the Target disc file is current, enter the command STAT for display of the S94 screen providing Target System status.

(2) Data, once introduced, will be retained in the master record unless replaced by positive (including zeros) data. With Target amended award processing, the master record data are displayed for the award data entry screen requested. If a field with data is blanked out, including use of the EOF (Erase End of Field) key, that data will be deleted from the master record.

(3) Transfer and retention of significant data when records are removed to the TDN (Terminated-Disallowed-Notice of Death) inactive master file. (See subpar. d below.)

(4) The postaudit of all records (primary and secondary records) under the same file number after the input transactions have been fully processed to update the master record for auditing and balancing of the entire case.

b. **C&P Master Records File.** This is the principal file containing the complete case record data for the Compensation and Pension System under the following seven types:

(1) **Type A, Veteran Records.** When there is an award (including an award to an apportionee) of disability compensation or pension, Naval pension, or emergency officers' retirement pay, there must be a type A master record under payee number 00 (veteran), containing all the input data furnished from the award to or for the veteran and the disability rating decision.

(2) **Type B, Death Records**

(a) A type B master record is established for each award of death compensation or pension, or DIC (Dependency and Indemnity Compensation) to:

1. A surviving spouse;

2. Each parent;

3. Each separate or consolidated award of Improved Pension for a child or children;

4. Each separate or consolidated award of Old Law or Section 306 pension for child(ren) when there is no surviving spouse or, in DIC cases when there is a surviving spouse, for child(ren) over 18, in school, or helpless.

5. Each separate (additional) award of 38 U.S.C. 412(a) under payee numbers in the 70 series.

(b) The basic segment for each type B master record provides all the data fields necessary for that specific amount, but only the first (primary) type B master record carries the "vital statistics" segment for the entire case. The primary record will be the one carrying the lowest payee number.

(c) Death ratings are not processed into the ADP (automatic data processing) system and, therefore, do not supply any master record data.

(3) **Type C, Disability Apportionee Records.** Each type C master record gains its statistical support from the type A master record in the case and, therefore, will not be processed (nor maintained) without an existing or simultaneously created type A master record.

(a) Type C master records contain only sufficient data to identify the particular account and to provide for the payments as authorized.

(b) An additional (separate) institutional award for a veteran is processed and maintained as a type C master record under payee number 99 (see par. 28.07c).

(4) **Type D, Accounts Receivable or Trust Fund Records.** Type D master records are created and maintained only when there is no existing type A, B, C or F master record for that payee. Therefore, they are established only when there is an overpayment of PFOP (Personal Funds of Patients) or FDIB (Funds Due Incompetent Beneficiaries) balance existing or created at the time an account is terminated, or when established by a separate input transaction introduced by the Finance activity. Type D master records contain, in addition to the necessary basic identifying data, the amount of the PFOP or FDIB balance or accounts receivable, month and year established, and the reason. (See also subpar. (7) below, re type G master records.)

(5) **Type E, Terminated Records.** Type E master records are only temporary records maintained in the C&P master records file at the termination of type A, B, C, or F master records, generally only through the end of the 6th month following the month of termination, and are then purged from the master file. (See subpar. c below re inactive master record file.)

(a) If an accounts receivable or PFOP or FDIB balance exists, a type D master record is substituted in the active master records file.

(b) Whether or not a type D master record is established, certain selected data will be transferred to the inactive master records file.

(6) **Type F, Death Apportionee Records.** Each type F master record gains its statistical support from the payee 10, surviving spouse (primary) type B master record and, therefore, cannot exist without the payee 10 master record except under an error condition.

(a) When a payee 10 record is terminated, computer processing changes all type F records to type B. Accordingly, any action terminating a payee 10 award must be accompanied or followed by appropriate action to adjust or terminate the apportionee awards. Otherwise, the type F records, converted to type B records, at apportioned rates, will be carried under an audit error condition with notice to the field station (Msg 828, NO PRIME RECORD FOR THIS AWARD), requiring replacement of the terminated type B record (actual or for record purposes) or an amended award authorizing the nonapportioned rates.

(b) The statistical segment from a terminated primary record will be moved to the type F record with the lowest payee number, making that record the leading type B record. The other type F records, if any, will be simultaneously changed to secondary (additional) type B records.

NOTE: Under Improved Pension a child(ren) not in custody (as defined by VAR 1252(E)(2)) of the surviving spouse may have independent entitlement. Therefore, a secondary type B (rather than type F) record will be created for such child(ren), unless he/she is in receipt of a protected apportionee rate in accordance with paragraph 42.02.

(7) **Type G, PFOP Recurring Payment Records.** Type G master records are created and maintained when recurring payments from PFOP are authorized. There is no type A master record. This is a converted type D master record from which it differs only in that the type G master record is supplied with the name and address of the person to receive payments out of the PFOP fund.

c. **Inactive Master Record File.** This file is made up of Compensation and Pension System records established upon termination of a veteran award, disallowance of a veteran's claim, or processing of an NOD (Notice of Death) transaction upon the death of a veteran:

Type T—Terminated Record

Type N—Notice of Death Record

Type D—Disallowance Record

(1) None of the data in these records is retrieved upon the reestablishment of an active master record.

(2) Inactive records contain selected basic data (in addition to the necessary identifying data) and are updated or changed to only a limited extent; to record the fact of the processing of certain transactions handled in the regular processing cycles, such as an award of burial allowance, NOD transaction, etc., and an award or termination creating or terminating a reactivated master record in the same case.

(3) These records also carry data relative to the award or disallowance of death claims.

d. **Manila No-Pay Master Records.** Records for accounts on cases in the Manila regional office and the Philippine cases payable in pesos are established and maintained in the Hines DPC master records file as "No-Pay" records. This is because payment for these cases must be made outside the computer system. These records, however, are as complete as any record for which systems payment is made, including a name and address field. (See also par. 35.18.)

15.02 PENDING ISSUE FILE DATA

a. **General.** The PIF (Pending Issue File) is maintained at the RDPC (regional data processing center) and contains data required for award and disallowance actions and other data .elating to development, location of the claim and the end product assigned. Data while stored in the PIF may be displayed on the VDT (Video Display Terminal) by use of the PINQ (Pending Issue File Inquiry) command.

b. **Establishment of Pending Issue File Data**

(1) Data may be entered into the PIF through processing on the screens designated for the various levels of data entry which represent the following functions:

Functions	Command	Screens
Claim establishment	CEST/PEST	100 series
Development	CDEV	200 series
Data Entry	CDAT	300 series
Adjudication	CADJ	400 series
Authorization	CAUT	501

best copy available

(2) For the valid processing of any award or disallowance action the minimum requirements under the Target System will require the establishment of the claim as a pending issue, completion of the applicable 300 and 400 series screens, and authorization using the 501 screen.

NOTE: It must be understood that system capability for award generation based on data entered does not affect existing procedural requirements for authorization of awards. (See par. 15.09.)

(3) With generated amended award processing, data may also be extracted from the Target master record file and stored in the PIF.

c. **Requesting Screens**

(1) Access to the various screens is controlled, so that any screen requested may not exceed the command level being used but screens from a lower level may be accessed. For example, an adjudicator using the command CADJ (Claims Adjudication) may access 200, 300 and 400 series screens but cannot access the authorization screen 501.

(2) The system will also restrict access to screens within a series, if the screen requested is inappropriate for the issue being processed. For example, if under the CDAT command an operator has requested a record which has been established as a live compensation or pension benefit claim (CPL) the system would not permit display of the burial screen (307) since that would be an inappropriate screen for entry of data for the established issue.

d. **Data Entry Content.** Entry of data for Target processing must meet acceptable formats required by the system edits. Statistical data entries other than those normally used are identified in subsequent paragraphs providing instructions for data entry on individual screens.

e. Data Entry Format

(1) Prefixing zeros are not required when entering disability percentages, dollar amounts, or rating codes. Prefixing zeros must be entered for special monthly compensation codes when applicable.

(2) Dates may be entered in several different formats as follows:

MM-DD-YY

MM-D-YY

M-DD-YY

M-D-YY

MMDDYY

NOTE: If a date is entered without using hyphens then single-digit months or days must be entered with a prefixed zero. Thus, February 3, 1980 would be entered as 020380.

(3) When the required entry is for month and year; e.g., establishment of a diary control, the acceptable formats are as follows:

MYY

M-YY

MMYY

MM-YY

NOTE: Lead zeros need not be entered for single-digit months.

f. Special Processing Functions

(1) Entry of DEL (Delete Data) in the Next Screen field will result in deletion of that screen's data from the PIF and display of the menu screen applicable to the command.

(2) Entry of RES (Restore Data) in the Next Screen field will result in the system ignoring any data entered on the screen and retention of any existing data previously entered. The prior data entered, if any, will be displayed.

(3) Entry of BSP (Back-Space) in the Next Screen field of a 306 or 336 screen will result in the redisplay of the 306 income screen for the immediately preceding date.

15.03 CORRECTION OF ERRORS

a. RDPC Audit Procedure

(1) After data are entered on the screen they will be edited prior to acceptance for storage in the PIF. The system edits for the validity of codes entered, data format, completeness of data, consistency of data, etc. Should any error be identified, the system identifies the unacceptable data by inserting an asterisk in any field where data should have been entered, and through display of error messages on the last two lines of the screen.

(2) The Target System performs two types of editing for RDPC processing. The first type concerns errors identified by the system's editing of data entered which prohibits any further processing as the data entered are unacceptable or essential data are missing. The second type of edit concerns identification of possible inconsistencies with data entered. Such possible error conditions do not prohibit processing, but are provided to alert the operator of the possibility of inconsistent data being entered, or to enter additional data if available.

(3) When either the entry GAD (Generate and Display award) or GAP (Generate and Print award) is used, the system edits all data entered for that issue. For original and reopened award processing, the system is primarily checking the data stored in the PIF. With amended award processing, the system checks both PIF data and master record data. Should any error be identified by the system the applicable message is generally displayed on the 390 error message screen.

[(4) When the entry GAB (Generate award and Bypass validation edits) is used, the system will not edit the award data entered for that issue. Likewise, use of the GAB function will preclude the generation of the Target award letter.]

b. Identification of Errors Prior to Authorization. Should any errors be identified prior to authorization, corrections are to be made on the applicable screen. When an award has been generated and printed and thus is pending authorization, it is necessary to enter "N" in the Authorized field of the 501 screen. This releases the issue from authorization control and enables any corrections to be made.

c. Identification of Errors After Authorization. Once an issue has been authorized, no other award action can be processed for that payee if it is for the same benefit type. Thus, if an award of compensation is authorized, until that award processes no other award for either compensation or pension can be authorized.

(1) If the award does not reject at Hines, then appropriate amended award action should be taken to correct any errors detected.

(2) If the award rejects at Hines, NOES (Notice of Exception) data are generated and the specific error is posted against the issue with the applicable message displayed on the [PØI] (Pending Issue Claim Status) screen. Any corrections should then be made using the original issue for reprocessing.

(3) After a cycle is processed at Hines, any transactions which rejected will cause reject notices to be posted against the applicable issues in the PIF. To identify transactions which rejected, it is necessary to request a print of the applicable issues for each cycle by use of the NOES command. Although the reject notices are retained in the PIF until the same numbered cycle is run for the following month and that cycle's rejects are posted, it is essential that rejects from each cycle be promptly identified and corrective action taken. Should a reject not be cleared within 10 calendar days it will be shown in the WIPP (Work-in-Process) system as a rejected issue exceeding the standard.

d. **Automated Computer Adjustments.** If, upon subsequent handling for any reason, it is found that an automated increase resulted in payment of other than the correct amount, the award will be amended to provide for the correct rate from the date of last payment. The error will be documented briefly on the award document and VAR 1500(B)(2) cited without need for the administrative decision otherwise required by paragraph 14.35b.

15.04 DELEGATION AND TERMINATION OF AUTHORITY TO AUTHORIZE AWARDS

A record of the commands controlling [entry] of data and authorization is maintained within the Target security system for each individual having access. Any changes in access authority should be sent immediately to the station Target Security Officer.

15.05 AWARD SCREENS

In addition to the 100 series screens required to establish a pending issue (CEST or PEST) and the 200 series screens to accomplish development (CDEV), the following award screens will be used for award actions relating to gratuitous disability and death benefits:

a. Screen 301—BASIC RATING DATA

b. Screen 303—SUPPLEMENTAL LETTER DATA—RATING

c. Screen 304—DEPENDENCY

d. Screen 306—[VETERANS INCOME REPORT](VETERAN'S; WIDOW/ER's—CUSTODIAN'S; OR PARENT'S INCOME)

e. Screen 336—CHILDRENS' INCOME REPORT

f. Screen 401—SPECIAL CONDITIONS

[g.] Screen 403—[ ] DISABILITY/DEATH AWARDS

[h.] Screen 404—PRIOR DISABILITY/DEATH AWARD

[i.] Screen 501—AUTHORIZATION

15.06 TYPES OF AWARD ACTIONS AND DEGREE OF COMPLETENESS REQUIRED

a. **Original Award Processing.** For Target processing, the term "original award" means an initial award to the payee or a reopened award from termination.

(1) Transaction code 11 is system generated for initial awards with modifier B; except modifier F is generated for any apportionee award. Modifier D is generated if there is still a terminated master record on the Target file for the applicable payee, or should the REOPEN FROM TERMINATED field be selected on a 306 screen (see par. 15.22d(7)); except modifier R is generated for reopened apportionee records. Modifier E is generated only when the reopen from disallowed indicator is selected on a 306 screen.

(2) Original awards to veterans must contain complete data (par. 15.02) and must be accompanied by rating data. The system will generate rating data for pension cases based on attained age 65.

(3) In death cases, the original award to the primary beneficiary must contain the *complete* data for that beneficiary, together with the vital statistics data for the case (pars. 15.01b(2) and 38.02). *NOTE: For Target processing, statistical data are entered during claims establishment and should be reviewed for accuracy. These data can be displayed by using the PINQ command to display screens POI and 101 (BIRLS DATA).*

(4) In all cases, for additional awards (all apportionee awards and, in death cases, awards to secondary beneficiaries) enter only those data not already supplied in the primary record which are necessary for computer audit and payment of the benefit authorized by that specific account. *NOTE: For a reopened award prior award data may have to be entered on screen 404 (see par. 15.36).*

b. **Amended Award Processing.** The term "amended" award is restricted for use in describing awards effecting changes in an existing running award, including an account in suspense (i.e., an existing type A, B, C, or F master record).

(1) **Transaction Codes.** Transaction code 13C is generated for amended awards; however, transaction code 13Q is generated if the IQ indicator is selected on a 306 screen. *NOTE: Code 13G or 13I will identify a computer-generated amended award transaction.*

(2) **Preparation.** The data entry for these awards will be completed only to the extent necessary to effect the desired change.

(a) Data entered for an amended award will replace the data previously furnished for [entry] in those fields of the master record, or establish data fields as required, under the basic system concepts set forth in paragraph 15.01. In this application, the award line or lines introduced on the amended award replace all award segments in the master record having an effective date equal to and subsequent to that of the first award line on the amended award.

(b) If, by reason of intervening action terminating the account on the master record (including an updating of a type H future termination segment), an award prepared as an amended award must be changed to a reopened award, the additional statistical and rating data will be entered from the prior award (and current rating) in the claims folder.

(3) **Use.** Amended awards will be used.

(a) To effect a change or correction in rates, amounts withheld or effective dates (retroactively, currently or in the future), providing that the first award line will furnish all line entries as of the date (retroactive or prospective) the change is effective. This requires reentry of previously introduced unchanged data.

NOTE: Supportive data [ ] will be corrected [either] by use of the master record correction (CORR) function [or 02M correction.]

(b) To resume payment in an account in suspense, only when required in accordance with paragraph 17.14.

(c) To add future award data omitted from an award processed under additional futures code "D" when computer generation of additional futures is not possible. (See par. 15.24d)

15.07 MISCELLANEOUS AWARD PROCESSING DATA

a. **Distribution of Copies.** In any instance where a copy of the award document is required, it will be necessary to reproduce the award document. The address (city and State) of the regional office to which a copy is to be sent will be annotated on the award document retained in the file. This entry must be kept current in the event of subsequent transfer of the guardianship, DEA (Dependents' Educational Assistance), etc., folder, by superimposing the city and State of the regional office to which transferred.

b. **Remarks.** Except as specifically required elsewhere in this manual, remarks will be confined to concisely stated information sufficient to explain the basis for the action. It will not be necessary to state that requirements of the controlling law were met.

(1) In amended or reopened awards creating or involving overpayments, the appropriate notation will be stated briefly (e.g., "Overpayment Created"). When recovery of an earlier overpayment has been waived (as evidenced by VA Form 21-4190 (now obsolete) filed in the award section of the claims folder), an appropriate statement will be included as remarks on any subsequent award which provides for an increased rate during the same period covered by the overpayment, to insure that the payee is not paid an amount previously overpaid, recovery of which has been waived.

(2) See also paragraph 12.16 re entries on awards to parent-custodians under VAR 1850(C); and paragraph 15.03 re correcting awards due to computer error messages.

15.08 AWARDS FOR CHILDREN—SEPARATE AND CONSOLIDATED

a. **General.** A separate award will be prepared for each child beneficiary except that when two or more children are receiving or entitled to receive payments through the same fiduciary (including a parent-custodian recgonized under VAR 1850(C)), a consolidated award may be made to each such fiduciary, in accordance with the following:

(1) **Disability or Death Compensation/Old Law, Section 306 or Improved Pension.** Consolidated awards may be made for any two or more children under the age of majority.

(2) **DIC—Surviving Spouse Entitled.** Consolidated apportionee awards will be made only for children under 18 years of age. Separate individual awards will be required for children over 18 attending school or helpless.

(3) **DIC—Children Only—No Surviving Spouse Entitled.** Consolidated awards will be made only for children under 18 years of age. Separate individual awards will be required for children over 18 attending school or helpless.

(4) **Improved Pension.** Consolidated awards for children are for use in Improved Pension cases only when two or more children are in the custody of a surviving spouse who lacks entitlement to pension benefits by reason other than excessive income or net worth (i.e., remarriage), or in the custody of a fiduciary or legal custodian whose income combined with the children's consolidated income awards.

b. **Preparation of Consolidated Awards.** Consolidated awards will be prepared in a manner similar to any other fiduciary award (par. 12.02).

(1) **Payee Number—Consolidated Awards**

(a) The first consolidated award in the case will be assigned payee number 31. The second and succeeding consolidated awards to other fiduciaries will be assigned a sequentially higher payee number. A consolidated payee number is used to identify only a group award and will not be changed as individual children are added to or removed from the group originally awarded under that payee number, nor when the original fiduciary is replaced for any reason.

(b) For separate child awards, codes 11 through 19 will be used unless additional payee numbers are required; then numbers 31 through 39 will be used.

(2) **Consolidating Current Separate Awards.** When separate awards for children are to be consolidated under one award, the separate award for each child will be terminated by stop award action (under reason code 31) effective the first day of the month following the month in which the action is taken, or if in suspense, as of the date of last payment. The consolidated award will then be made, or amended to include the additional child(ren), effective from the DLP (date of last payment) of the terminated award(s), also using reason code 31. If a retroactive adjustment is involved, the following actions will be taken:

(a) **Retroactive Increase Involved.** When the evidence requires a simultaneous retroactive increase in the awards being consolidated by reason of the retroactive reduction in or discontinuance of payments to another fiduciary, the consolidated (original) award will authorize the increased benefit, at a differential rate, effective the date of reduction or discontinuance of the award to such other beneficiary, to the date of last payment under the awards being consolidated, and the full combined (statutory) rate(s) thereafter (VAR 1651). (Also see par. 38.04a(2) re preparation and processing of death awards at differential rates.)

(b) **Retroactive Decrease Involved.** If the evidience requires a simultaneous retroactive decrease in awards being consolidated by reason of a claim by or for an additional beneficiary for whom a share was not withheld under VAR 1107, and the provisions of VAR 1650(A)(1) are for application, it will be necessary to amend the awards being consolidated to effect the required reduction effective from the date of the additional beneficiary's entitlement and discontinuance for the purpose of consolidation.

c. **Miscellaneous Actions in Consolidated and Separate Child Awards**

(1) **Adjustment of Awards**

(a) Adjustment of a consolidated award to two or more children to create an overpayment chargeable against all the children on the basis of their equal share, will be effected by an amended award or stop award action prepared and processed in the usual manner.

(b) When an overpayment is to be created against only one child (less than all) for a limited retroactive period and the child has current continuing entitlement, the adjustment may also be effected by amendment to the consolidated award. Appropriate explanation will be included as remarks and the fiduciary-payee informed that the overpayment is chargeable to only the specific child.

(c) However, when the child's entitlement has terminated or has continuing entitlement insufficient for full recoupment of the overpayment being created, special award action will be required to ensure assessment of the overpayment against only the one payee, as follows:

1. The consolidated award will be amended to show the payee as fiduciary of only the child overpaid instead of using the consolidated award legend "children of," etc., but the Name of Person Entitled (viz the veteran) will not be changed.

2. Separate individual (original or reopened) awards will be made under a new payee number (or one previously assigned to the remaining child or children) in the 11 or 31 series (see subpar. b(1)(b) above) as may be appropriate, authorizing the adjusted entitlement for the remaining child from the date entitlement terminated for the overpaid child, with the full rate payable from the date of termination of the amended consolidated award.

3. These actions will ensure that the proper overpayment is charged against the specific child with the remaining child or children receiving their full benefits.

(d) Appropriate explanations will be included as "remarks" on both awards documents.

(2) **Stop Award, Suspend and Resume Payment Actions.** These will be prepared and processed as usual when applicable to benefits for the children sharing the award. When the action to be taken affects the entitlement of less than all the children in the award, however, adjusting award actions will be required, as provided in subparagraph (1) above.

15.09 AUTHORIZATION POLICY AND SCREEN 501 PROCEDURE

a. **Basic Requirements.** All awards and disallowances, whether generated under the CDAT or CADJ commands, are subject to review and approval by both an adjudicator or burial clerk and an authorizer; i.e., a person designated by the Adjudication Officer as having authority to approve such awards. Their signatures (and date) will be entered in the spaces provided on the award document prior to authorization (CAUT) on the 501 screen.

[NOTE: All award documents must be signed in ink.]

b. **Three-Signature Awards.** In addition to the signature of an adjudicator and approval of an authorizer, the adjudication Officer or supervisory designee (not lower than section chief) will be required to review and approve awards authorizing initial or increased benefits for a retroactive period of 5 years of more. (See par. 49.25.) The Adjudication Officer or supervisory designee will sign, date and add his/her title in the lower right margin beneath the authorizer's signature on the award document.

c. **Importance of Accuracy.** Absolute accuracy as to form and content is essential.

(1) The signature on an award by any adjudicator or authorizer is a certification that the findings of fact and law therein are correct and that the person named thereon is entitled to the benefits authorized under the provisions of the applicable laws.

(2) This absolute accuracy is especially important in entries of effective date and retroactive data where errors may not be detected by computer edit or audit. (Also see par. 15.03.)

d. Screen Data

(1) **TRANSACTION.** The system will display the transaction code number (three positions) and either the legend "AWARD" or "DISALLOWANCE," as appropriate.

(2) **RELATED ISSUES (Payee and EPC (End Product Code)).** The system will display any additional pending issues with the same file number.

(3) **AUTHORIZED.** Enter "Y" for approval or "N" if approval is not granted, as appropriate. If "N" is entered, the disposition screen will be displayed for proper routing for corrective action required, if any. The award document print must be destroyed whenever authorization approval is denied.

(4) **SUPPLEMENTAL PAYMENT.** Enter "Y" if award is a supplemental burial payment.

(5) **COLLECTION CODE.** Data for this field are entered by the Finance activity under the command FISA (Fiscal Authorization) and displayed at the time of authorization. Prior to authorization of any original or reopened award, the MO1 screen (DEDUCTION/RECEIVABLE/BALANCE DATA) must be reviewed to determine if there is any existing overpayment. Should there be an existing overpayment, the file and the award document are to be referred to the Operations Section in the Finance activity. The Finance activity will enter the appropriate collection code and any collection amount, and will notify the claimant of the action to be taken.

(6) **LETTER SUPPRESSOR.** Enter "Y" if a system-generated letter should not be released. If a letter is required, it must be prepared manually. *NOTE: If during GAP processing, the system determines that it cannot generate a letter, the letter suppressor will be automatically set and the message "DICTATED LETTER REQUIRED" displayed. The specific reason why a letter could not be generated is printed as "remarks" on the award print.*

(7) **SC DEATH PENDING.** Enter "Y" if death pension is to be paid pending resolution of a claim for service-connected death. Use of this indicator will result in appropriate notification being furnished in the award letter. *NOTE: When this field is used, the CONTINUE CONTROL SUSPENSE DATE field must also be completed. (See subpar. (10) below.)*

(8) **OVERPAYMENT PARAGRAPH.** Enter "Y" if an adjustment to an award will result in an overpayment. Use of this indicator will result in appropriate notification being furnished in the award letter.

(9) **CHANGE END PRODUCT CODE.** If the EPC displayed is incorrect, enter the correct code in this field for proper credit to be taken. Once entered, the PIF will display the new EPC.

(10) **CONTINUE CONTROL SUSPENSE DATE.** If the authorization action being taken is only to be an interim action and the EPC is not to be cleared, then enter the applicable suspense date.

NOTE: If the Continue Control option is selected, the selected authorizer can enter a 200 series screen in the Next Screen field without completing the additional paragraph indicator.

(11) **CANCEL PENDING ISSUE.** If it is determined that no award or disallowance action is required and the issue is to be canceled, enter "Y."

(12) **ESTABLISH NEW ISSUE**

(a) If review reveals that an additional issue should be established as pending in the claim, the appropriate end product code for the new issue will be entered in the field.

(b) The Pending Issue Control Screen (103) will be displayed. Available fields from the prior claim will be displayed when the screen is presented. Appropriate entries as required under the PEST command will be made.

(13) **SECTION 156, AREPS.** Enter "Y" to establish the SECTION 156 REPS indicator in the master record. Enter "N" to remove the REPS indicator from the master record. (See par. 40.33a.)

[(14) **AUDIT RELATED A/R.** Enter "Y" to establish the AUDIT RELATED A/R indicator in the master record. (This positive field entry indicates that the record contains a type 30B accounts receivable which resulted from either an Inspector General or General Accounting Office audit.) If entered, either OVERPAYMENT PARAGRAPH or LETTER SUPPRESSOR must also be entered.

NOTE: The field is correctable only via the CORR command or by liquidation of a type 30B accounts receivable.

(15)] **SPECIAL LETTER ATTACHMENTS.** Enter "X" in the appropriate indicator if forms for clothing allowance, specially adapted housing, automobile allowance, vocational rehabilitation (ch. 31) or Dependents' Educational Assistance (ch. 35) should be included with the award letter.

[(16)] **ADD'L DEVELOPMENT PARAGRAPH.** Enter "X" if access to the 200 series screen is required so that the development paragraphs can be incorporated in the award letter.

[(17)] **NEXT SCREEN.** No entry is required. System will automatically dispose of issue to file. If "N" option was selected, the S99 screen will automatically be displayed. If Add'l Paragraphs indicator was selected and no entry was made, the 200 menu selection screen will be displayed.

15.10 RECORD PURPOSE AWARDS

Awards will be entered as record purpose awards when a nonpay master record is to be established and maintained for special purposes, such as to support an apportionee award (par. 26.02a(2)) or to provide for continued payment of insurance premiums in a disappearance case (par. 24.09). A record purpose award will be entered as any other award except that:

a. Name and address field on screen 102, 103 or 601 will be completed, as applicable, to show only the name of the beneficiary (without legend) and, instead of the address, the words "For Record Purposes."

b. Award Data will be completed with appropriate entries to show "Zeros" as the "Monthly Rate" by reason of a total withholding under type 1, unless (for veterans only) another type of withholding is (also) involved. (Also see par. 15.34.)

NOTE: Record purpose surviving spouse awards are not for application under the provisions of Improved Pension benefits.

15.11 AWARD NOTICE LETTER

a. **General.** The Target System will provide a letter with information about the award of benefits using data entered during award processing. See MP-6, part XXV.

b. **Letters Not Written List.** A daily listing will be provided by the respective RDPC's for each regional office indicating either that all letters were generated or identifying any case where a letter could not be generated. For any issue where a letter could not be system generated a reason will be furnished. These listings should be destroyed in accordance with RCS VB-1, part I, item 13-052.2.

c. **Automatic Target Letter Suppressor.** There are certain cases identified during processing for which an appropriate letter cannot be system generated. When such cases are identified, a message explaining why a letter cannot be provided will be printed on the award document and the letter suppressor on screen 501 will be automatically set.

d. **Additional Development.** Any of the development paragraphs provided on the 200 series screens may be selected for inclusion with an award letter. The required development items can be selected prior to the award being generated and printed, or the Add'l Development Paragraphs field on screen 501 can be used at the time of authorization. If any development paragraph is selected prior to the generating and printing of the award, then the award must be authorized the same day if the development paragraphs are to be included with the award letter. Should the award not be authorized the same day, a development letter will be released separately.

e. **Dictated Letters.** In the event that the Target award letter (and attachments) cannot furnish full information, a dictated letter or FL 21-822 will be used. However, this will require selection of the Letter Supressor option on the 501 screen.

f. **Notice to Holders of Power of Attorney.** Accredited service representatives, attorneys and agents holding valid power of attorney will be notified of the award action in accordance with paragraph 3.03. (See also par. 5.08.)

g. **Notice to Fiduciaries.** Care must be taken to insure that award letters addressed to fiduciaries comply with the special instructions as provided for:

(1) **Custodian Recognized Under 38 CFR 3.850(c).** See paragraph 12.16d.

(2) **Consolidated Awards.** VA Form 21-8050, Notice to Fiduciary, may be used with FL 21-822 to fully inform the fiduciary that monthly payments are made under a consolidated award and [how] these payments are to be divided among the children (par. 12.16d).

h. **Notice to VSO.** See paragraph 12.12.

i. **Notice to Member of Congress.** When congressional interest has been expressed, notice of the award action will be furnished by dictated letter. In this connection, form letters will not be used, except as copies of form letters transmitted by means of dictated letters.

j. **Awards With Omitted Futures.** See paragraph 15.24d.

k. **Imminent Attainment of Age 18 by Child.** When the award being processed provides for reduction or discontinuance within 4 months from the date of approval of the award by reason of a child's attainment of age 18, notice will be included of possible continued or additional entitlement for the child. VA Form 21-674, Request for Approval of School Attendance, will be sent with the award letter. In cases in which there is potential entitlement to DEA under 38 U.S.C. ch. 35, VA Form 22-5490, Application for Survivors' and Dependents' Educational Assistance, and VA Pamphlet 22-73-3 will be provided automatically by the system as enclosures for any child who has attained age 16.

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l. **Notice of Potential Eligibility for Vocational Rehabilitation.** See paragraphs 15.09d(13) and 23.10c.

m. **Helpless Children.** In both disability and death cases, the award letter must furnish full information as to all the contingencies (marriage, employment, material improvement or excessive income) which require notice to the VA in order to prevent an overpayment. This information must not only be furnished to the initial payee, but also to each subsequent payee, such as a new custodian, fiduciary or child.

n. **Notices and Certifications to Service Departments**

(1) **Eligibility to Death Gratuity.** (Required when awarding DIC based on death within 120 days after discharge.) See paragraph 13.06.

(2) **Retired Pay Veteran Cases.** See chapter 29, subchapter V.

(3) **SBP Cases.** See chapter 41, subchapter III.

o. **Notices to Railroad Retirement Board of Status Changes.** See paragraph 13.12.

p. **Notices to State Public Assistance agencies.** See paragraph 13.17.

q. **Family Medical Expenses.** VA Form 21-8146a, Request for Information Concerning Unreimbursed Family Medical Expenses, will be used in Section 306 and Improved Pension cases and DIC parent cases when the applicant indicates such expenses were incurred (see par. 9.07c(1)).

r. **Notice of Potential Entitlement to 38 U.S.C. Chapter 35 Benefits.** When furnishing notice of an original award and there is a spouse, surviving spouse or child age 13 or older having potential eligibility to DEA benefits, in addition to applicable attachment(s) and VA Pamphlet 22-73-3, the following will also be sent (pars. 10.06 and 10.11b):

(1) Child age 13 to 17: FL 22-332.

(2) Child approaching age 18: VA Forms 21-674 and 22-5490. (Also see subpar. k above.)

(3) Child age 18 or older: FL 22-331 and VA Form 22-5490.

(4) Surviving spouse: VA Form 22-5490[ ].

(5) Spouse: VA Forms 21-8760, Additional Information for Veterans With Service-Connected Permanent and Total Disability, and 22-5490[ ].

s. **Notice to VA Regional Office and Insurance Center.** See paragraphs 28.05 and 49.06a(2).

[t. **Notice of Potential Entitlement to Benefits Under Section 156, Public Law 97-377.** When furnishing notice of an original DIC award and there is a surviving spouse whose youngest child is age 16 through age 17, or there is a child age 18 or older having potential eligibility to REPS benefits, in addition to applicable attachment(s), the beneficiary shall be sent VA Form 21-8924, Application for Benefits Under the Provisions of Section 156, Public Law 97-377. (See par. 10.16b(4).) When the SECTION 156 REPS indicator is selected on the 501 Authorization screen, the application and appropriate information will be included with the Target award letter. (See par. 15.09d(13).)]

15.12 DISPOSITION OF AWARDS, CLAIMS FOLDERS AND OTHER MATERIAL

a. **General.** Following approval of the award:

(1) All evidential material will be filed in the claims folder prior to this referral.

(2) The original of the award will be filed down on the inside left flap of the claims folder (par. 1.09 f and g).

b. **Special Instructions.** Care must be taken to insure that the need for any special action or additional form(s) or code sheet(s) required be identified by use of referral slips or memorandums, such as when:

(1) Copy of current rating is to be sent to Central Office (213B) to support award under special law code 10 (par. 15.32a(10)(a)).

(2) An award is to be processed providing for an increase during a period covered by an overpayment, recovery of which has been waived (par. 15.07b(1)).

15.13 UNUSUAL OR EXCEPTIONAL CASES–SPECIAL HANDLING

a. **Out-of-System Awards.** An out-of-system award will be prepared when there are unusual or exceptional circumstances in connection with an award requiring additional or exceptional information or data which may require special handling for computer processing; e.g., the award provides for payment for a retroactive period earlier than the rate generation capability of the system, the award exceeds the maximum 16 lines available on screen 403, or an award exceeds $99,999.99.

(1) The award will be prepared on white bond paper in a format similar to that used by the Target System, with all necessary award data including prior award data to effect payment, and will be signed by the authorizer. Additionally, the award will state the reason or reasons for the out-of-system award.

(2) One copy of the award will be retained in the claims [folder] as a control copy. Upon return of the original award from Finance, indicating their payment action is completed, the claimant will be notified of the award action by dictated letter.

b. **One-Time Payment Awards.** (See pars. 15.15 and 28.09c.)

15.14 AWARDS OF LESSER BENEFITS–EXPEDITED AWARD ACTION

Award action will not be deferred pending completion of all adjudication to establish entitlement to maximum benefits in a claim under consideration, when the evidence in file establishes entitlement to a lesser benefit.

a. The award of the lesser benefit will be processed without delay (see pars. 29.04, 32.16 and 39.04c).

b. When, as in paragraph 34.05b or 34.06a, it is provided that a rating decision shall first be obtained, after a rating decision has been made, no case ready for an award will be retained by the adjudicator longer than is necessary for the processing of the award.

c. Extreme care will be exercised to prevent the return to file of any case ready for an award before the award is submitted.

15.15 SPECIAL–EXPEDITED PAYMENTS

a. **Awards Requiring Approval by Director or Designee.** When notice of hardship is received in any organizational element (usually Veterans Services Division), VA Form 119, Report of Contact, will be prepared to furnish an outline of the facts with any supporting material as evidence indicating hardship. Further processing will be as follows to determine whether an immediate one-time "local special" payment, in the accumulated amount currently payable, will be processed *prior* to the authorization (CAUT) of the award for recurring payments processing and offsetting of the one-time payment. (See also MP-4 pt. IV, DVB supp. No. 1, par. 2.12b.)

(1) The Adjudication Officer or designee will add on VA Form 119 (including those originating in Adjudication Division) a recommendation for "local special" payment or for expedited authorization of the award for processing in the next cycle as provided in subparagraph b.

(2) If the Adjudication Officer or designee recommends "local special" payment of amounts accrued to date, the award will be generated with an extra reproduced copy which will be attached to the VA Form 119 and hand-carried with the claims folder to the Director or designee for determination as to method of payment and notation thereof on the VA Form 119.

(3) If disapproved for "local special" payment, the case will be returned to the Adjudication Division for normal processing. The reproduced copy of the award, if prepared, will be detached and disposed of as duplicate material in accordance with Records Control Schedule VB-1, part I, item No. 13-052. VA Form 119 will be filed in the claims folder.

(4) If "local special" payment is to be effected, the case will be hand-carried direct to the Finance Operations activity for processing, with the VA Form 119 and the award attached.

(5) When a "local special" payment is made, the award is not to be authorized until an accounts receivable is established in the master record to preclude duplicate payments.

(6) These procedures will not be initiated in any case for which an award has already been authorized under the CAUT command and is pending acceptance.

b. **Awards Requiring Expedited Processing**

(1) When notice of reject of an original or reopened award is received, the claims folder will be promptly reviewed to determine whether the payment reject creates a hardship warranting a "local special" payment. If so, the procedures in subparagraph a will be followed.

(2) When a rejected award is not recommended for "local special" payment, expedited action will be taken to correct the error in the PIF and to reauthorize the award on screen 501. Expedited processing will also be afforded when the claims folder contains ample evidence of the claimant's need and there has been an undue or excessive delay in adjudication of the claim.

c. **Notice to Claimant When Check Is Delayed.** When the award has rejected, the claimant must be notified that there will be a delay in payment. The notification will also advise the claimant that the award is being reprocessed and that a check will be mailed within 15 days.

SUBCHAPTER II. AWARD SUPPORT DATA

15.16 AWARD DATA ENTRY—GENERAL

a. **Original and Reopened Generated Awards.** When all the data (rating, income, dependency and special conditions) required to support the particular award are entered, the use of GAD, [or GAB] GAP is required for generation of an award. Entry of GAD in the Next Screen field will result in the system generating an award based on all data entered with display of award lines on the 403 screen. Entry of GAP [or GAB] will also result in the system generating an award; however, a print of the applicable award rather than 403 display will result. The use of GAP [or GAB] will result in the system automatically disposing of the issue to Authorization control.

b. **Amended Generated Awards.** Generated amended awards under Target require only minimal data entry to generate the award. Only data to be modified or added are to be entered. Target will then generate the applicable award based on the data entered and the existing master record data.

c. **Input Awards.** If an input award is being processed all of the changes requiring supporting data must be entered as well as complete award lines on screen 403. An input award is required when it is for:

(1) Old Law, Section 306 or Improved pension; disability compensation under the 1925 Rating Schedule; parent's DIC;

(2) A retroactive adjustment earlier than the following dates:

Disability Compensation: August 1, 1972

DIC (surviving spouse or children): January 1, 1972

(3) Payment at a nonstandard rate.

15.17 RATING DATA—SCREENS 301 AND 303

a. **General.** Rating data from the VA Form 21-6796, Rating Decision, must be entered on the 301 screen for an original or reopened award for disability compensation or pension; however, for a pension case if the veteran has attained age 65, as of the earliest effective date of the award, the Target System will generate the required rating data.

b. **Rating Data Screen 301.** The following are the acceptable entries for screen 301; however, for supplemental ratings certain current and future rating data will be displayed from an existing Hines master record.

(1) **ORIGINAL (Type Rating).** Only the original (initial) rating will be identified by entry of X or Y in the field. When left blank the system will identify the rating as a supplemental rating.

(2) **EOD/RAD (Service Dates).** The active duty date(s) from item 10, VA Form 21-6796, is to be entered unless displayed from entry on the BIRLS screen 101 during CEST processing or from an existing master record. Should incorrect service dates or blanks be displayed, the correct service data are to be entered. (See par. 49.10(b).)

NOTE: If any date entry is made, then any required BIRLS update must be entered using the BUPD (BIRLS Update) command.

(3) **ADDL SVC (Additional Service).** Acceptable entry is code 1, 2 or 3. (See item 11, VA Form 21-6796.)

(4) **DOB (Date of Birth).** Enter the veteran's date of birth from item 12, VA Form 21-6796.

(5) **COMBAT (Combat Status).** Enter the applicable code from item 13, VA Form 21-6796.

(6) **FUTURE EXAM.** Enter the date (month, year) of a future physical examination if shown in item 17, VA Form 21-6796, or "None" if that is shown in that item. Otherwise, the field should be left blank.

(7) **EMPLOY REVIEW (Employability Review).** Enter the date (month, year) if a review of unemployability is to be established, as shown in item 17, VA Form 21-6796, as establishment of another control under reason "02." Enter "None" if cancellation of another control for reason 2 is shown. Otherwise, the field should be left blank.

(8) **RATING DATE.** Enter the date of the rating as shown in item 18, VA Form 21-6796.

(9) **EFFECTIVE DATE.** Enter the applicable effective date(s) for each condition as shown in item 19, VA Form 21-6796. A minimum entry of one effective date is required with a maximum entry of four dates possible for each condition. When rating data from the master record are displayed, for current rating data "CURRENT" will be displayed in the first Effective Date field. ("CURRENT" must be changed to a date before the rating data can be reentered.)

NOTE: When there is a disability for which a date has not been provided on the rating sheet, enter the date of claim as shown in item 4, VA Form 21-6796.

(10) **LTR (Letter Paragraph Indicator).** This field is to be completed for any condition evaluated on a reopened rating. The LTR field is to be left blank for an original rating, and can be left blank for any condition not evaluated on a reopened rating (the system will assume code N is the applicable entry). The LTR field will be coded as provided below:

CODE	Rating Action
C	Confirmed and continued evaluation
R	Reduction in schedular evaluation
A	Service connection granted for a new condition
I	Increased schedular evaluation
N	No change; condition not evaluated this rating

NOTE: A dictated letter is required in all cases where rating action changes a tuberculosis evaluation from active to inactive with future reductions and for any rating providing for severance of service connection.

(11) [**RC (Rating Code).** A total of nine fields are provided for entry of the applicable rating code for each condition shown in item 19, VA Form 21-6796. When master record rating data are displayed, a maximum of six will be presented. Acceptable entries are 1, (01), 2, (02), 8, (08), 9, (09), 12 or 37. Any code entered will apply to subsequent lines of rating data until another entry in the RC field is made. Upon display from the master record, SC (service-connected disability) or NS (non-service-connected disability) will be shown. These alpha codes must be converted to the applicable numeric rating code 01 or 08 respectively before being reentered.]

(12) [**SERV (Service Period).** Enter SAW, MBP (Mexican Border Period), WWI, WWII, PTE, KC or VE as shown for each condition evaluated in item 19, VA Form 21-6796.]

(13) [**DIAG/ANAL (Diagnostic—Analogous Code).** Entry in this field is to be accomplished as follows:

(a) The applicable diagnostic code for each condition shown in item 19, VA Form 21-6796, is to be entered in the first four positions of the field.

(b) Any analogous code is to be entered after the diagnostic code separated with a slash (/) or a dash (-); e.g., 5001-5009. (See par. 49.18.) Special provision code 5 is system generated automatically.

(c) ES is to be entered immediately after the diagnostic code to indicate entitlement based on an extraschedular evaluation under VAR 1321(B). Special provision code 3 is system generated automatically. (But see subpar. (23) below re requirement for *entry* of this code in individual unemployability cases.)

(d) US is to be entered immediately after the diagnostic code when an otherwise unacceptable percentage evaluation has been assigned for a valid diagnostic code under VAR 1322(A) by reason of deduction of preservice level of a disability service connected by aggravation. Special provision code 4 is generated automatically.

(e) PP will be entered immediately after the diagnostic code to indicate entitlement based on an evaluation under the 1925 Schedule for Rating Disabilities.

NOTE: When diagnostics are displayed from the master record and if that diagnostic is no longer acceptable in the rating schedule then that diagnostic must be changed to a current diagnostic code.]

(14) [**W—% (Offset—Recoupment Type and Percentage).** Entry is required for award processing to identify any service-connected conditions subject to offset-recoupment as shown in item 19, VA Form 21-6796. Applicable entries are S (Disability Severance), R (Readjustment Pay) or O (38 U.S.C. 351 tort settlement) to be entered in the first position of the field. In the last three positions of this field, enter the applicable percentage of the disability evaluation which is subject to the offset-recoupment. (See ch. 29, subch. VII.)]

(15) [**BIL (Bilateral Factor).** Entry is required for each condition shown in item 19, VA Form 21-6796, for which a side modifier is shown; e.g., *left* thigh. Acceptable entries are L (left), R (right) or B (both) in the first position of the field and U (upper extremity) or L (lower extremity) in the second position. If the second position is entered then the first position must also be completed. Proper completion of this field is essential since these data are used to validate the bilateral factor when applicable.]

(16) [**% (Disability Percent).** Enter the applicable evaluation percentage(s) for each disability shown in item 19, VA Form 21-6796.]

(17) [**PAR (Special Paragraph Code).** Acceptable entries are 28, 29 and 30 when shown in item 19, VA Form 21-6796. (See ch. 53.) If paragraph 28 is entered, the system will generate special provision code 7; for paragraph 29, special provision code 1; and for paragraph 30, special provision code 2.]

(18) [**COMBINED DEGREE SC/NSC.** For entry of combined degree, four groups of three-position fields are available. In the first three positions, enter the applicable service-connected combined degree evaluation and in the second three positions, the non-service-connected combined degree evaluation as shown in item 19, VA Form 21-6796. An entry of "NPT" is to be entered in the applicable NSC combined degree field when the veteran is rated as not permanently and/or totally disabled on the current rating.

(19) **COMP A/A (Aid and Attendance—Service Connected).** The acceptable entry is "Y." Complete the field only when SMC is granted on the basis of the need for aid and attendance.

(20) **SPECIAL MONTHLY PENSION.** If entitlement to the aid and attendance or housebound benefit is granted by rating action in a pension claim, the field will be coded as provided below:

CODE	SMP STATUS
AA, A/A	Aid and attendance payable
HB, H/B	Housebound benefit payable
AH, A/H	Entitlement to aid and attendance established, housebound benefit payable because of hospitalization
N	Entitlement to special monthly pension terminated

NOTE: For the grant of A&A because of nursing home patient status, see paragraph 15.23b(8).

(21) **EMPLOYABLE (Service-Connected).** Enter "Y" or "N" as shown in item 14, VA Form 21-6796. If the field is left blank the system will assume an entry of "Y" is applicable.

(22) **COMPETENT.** Enter "Y" or "N" as shown in item 15, VA Form 21-6796. If the field is left blank the system will assume an entry of "Y" is applicable.

NOTE: Any entry made in the fields SPECIAL MONTHLY PENSION, EMPLOYABLE or COMPETENT will be automatically rolled to subsequent fields for each period of rating data entered.

(23) **SPECIAL PROVISION CODE.** Enter code 3 or 6 as shown in item 20, VA Form 21-6796. Codes 1, 2, 4, 5 and 7 are generated automatically when applicable.

(24) **LOSS CODE (Loss of Use, Anatomical Loss or Other Loss).** Enter the loss of use, anatomical loss or other loss code(s), as shown in item 21, VA Form 21-6796.

(25) **SMC/HOSP CODE (Special Monthly Compensation and Hospitalized SMC Code).** For entry of SMC/HOSP code, four groups of two-position fields are available. For each rating period, in the first two positions enter the special monthly compensation code, and in the second two positions enter any applicable hospitalized SMC code as shown in item 21, VA Form 21-6796. (See pars. 25.17b(4) and 49.22b(5).)

(26) **ADDL DIAG (Additional Diagnostics).** Entry in this field is to be made when more than nine conditions are evaluated. Acceptable entry is 1 to 9.

(27) **SC (Additional Diagnostics—Service Connected).** This field will be completed to identify the number of additional diagnostics entered in the field ADDL DIAG which are service connected. Acceptable entry is 1 to 9.

(28) **ENTITLEMENT CODE (Display Only).** The entitlement code for the current benefit payment will be displayed from the master record.

(29) **DICTATOR ID.** Enter the three-digit rating board number as shown in item 24, VA Form 21-6796.]

c. **Screen 303 (Supplemental Letter Data—Rating).** Acceptable entries are for disallowances under rating codes 8, (08), 14, 15, or 38. Data entered on this screen are used to generate the appropriate disallowance paragraph(s) for either award or disallowance actions. Enter the code and then the description of the condition (field limited to 25 positions) for which service connection is denied. If two or more conditions are denied under the same rating code, it is not necessary to repeat entry of the code as the code entered is repeated until a different code is entered.

NOTE: Under no circumstance should more than one line be used for each description of a disability or condition.

15.18 DEPENDENCY—GENERAL

The Dependency Data Screen (304) is provided for the recording of information pertaining to dependents on account of whom benefits are being or will be authorized. These entries will provide necessary data for the master record file and will also serve as a ready reference for subsequent adjudication. The screen contains a maximum of 10 child data segments.

a. **General.** Birth data entries will be made for only those children recognized as children under VAR 1057.

(1) **Apportioned Awards.** When an apportionment is authorized for a dependent, dependent's birth data must be entered on the applicable apportionee award.

(2) **Apportionment Pending.** When payment to be made for a child under an apportionee award is pending and is being withheld (type 1 W/H) on the primary award, the child's birth data will be for entry on the primary award, and will reflect the pending apportionment; e.g., surviving spouse's award will show dependency 11/10, and no entries on the award will be required to change the dependency code data when the apportionee award is made; however, the applicable child birth segments must be removed from the primary award.

b. **Routine Computer Maintenance**

(1) **Generated "School" Letters.** Birth segment with status code 1 or 4 (under age 18) will be the primary source of data for issuance of letters at ages 13 and 16, and of VA Forms 21-674c, Request for Approval of School Attendance, computer-generated letters of notice of potential for continued benefits after age 18 on account of school attendance or helpless status (see par. 10.06a).

(2) **Child Reaching Majority.** When payments are being made to a fiduciary for a child over age 18 under a payee number in the 11 series, a Message Code 692, CHECK FOR CHILD REACHING MAJORITY ON (DATE), will be issued 2 months before the child reaches age 21 so that the child's current address and unmarried status (and, if necessary, verification of school attendance) may be obtained to authorize (continuing) direct payment as an adult. (But see pars. 10.07d and 12.04 re scheduling future reduction or termination under reason code 31 to pay child direct at majority, establishing future controls for this action for an earlier date of majority, and authorization action required.)

(3) **Age 18 Notice-Child Receiving 38 U.S.C. 412(a) Special Allowance.** See paragraph 40.17 re computer notice (Msg 688) for action to notify Social Security Administration of approaching 18th birthday of child receiving special allowance under 38 U.S.C. 412(a).

(4) **Automatic Purge of Birth Segment.** When the required birth segment has been established in the master record, it will be automatically purged during the routine computer audit processing after update of the scheduled future reduction in the benefit which was being paid on account of the child so identified, in accordance with the following:

Future Reduction Reason Code	Matching Birth Segment Purged If Status Code Is
24—(Age 18)	1 or 4—Under age 18[a]
25—(End of school)	2—School child[b]
54—(No longer helpless)	3—Helpless child[b]
24, 25 or 54—(Died or married)	6, 7, 8 or 9—Any child status[c]

[a] *Birth segments for children, status code 1 or 4, "under age 18," are purged during the computer audit as a result of the scheduled reduction as of the date the child reaches age 18. (See subpar. (1) above.)*

[b] *If there is only one school (or helpless) birth segment, it is purged by audit following the reason 25 (or 54) future update. However, when there are two or more birth segments with these status codes, there is no capacity to identify the segment to be purged, and consequently, automatic purge will be deferred until the school (or helpless) counter (par. 15.35) reaches zero and ALL school (or helpless) birth segments may be safely purged, or sooner in the case of the school birth segments, when age 23 is reached.*

[c] *ALL birth segments with status code 6, 7, 8 or 9 are purged at EOM December, EXCEPT that a segment with status code 6, for a child reaching age 18 before the end of the year, will be purged by audit following date of the reason 24 award line; purging will also occur for a status code 7, if it is for the only or last school child with a reason 25 award line. (See also par. 24.16b.)*

15.19 DEPENDENCY DATA ENTRY—SCREEN 304

a. **General.** When dependents (spouse, parents or children) are to be included in an award, the statistical data for each dependent will be entered on screen 304. If a master record exists, excluding a type "E" record, then any dependency data will be displayed when the 304 screen is requested. Any modifications or additions will then be made on the screen. This screen is available for payee 00 and for death cases, payees 10, 11 through 19 and 31 through 39.

b. **Screen 304 (Dependency Data).** Applicable to spouse, parents, and children.

(1) **IND (Dependency Indicator).** Enter "Y" to indicate the applicable dependent. If the master record shows that a dependent is currently included in the veteran's award, an "X" will be displayed in the indicator field for that dependent.

(2) **DOB (Date of Birth).** Enter the month, day and year.

(3) **HLP (Helpless Spouse).** If the veteran is to be granted additional benefits because of the spouse's need for aid and attendance, enter "A," or if the spouse is housebound, enter "H." If there is a master record indicating such entitlement, then "A" or "H" will be displayed, as applicable. If entitlement to the additional benefit is to be discontinued, enter "N." (See par. 47.06.)

(a) The effective date of the grant or removal of the benefit will be entered in the change status field and the applicable reason code will be entered indicating the grant or discontinuance of the benefit.

(b) For Improved Pension awards when both spouses are veterans, entry in the helpless spouse field must be supported by completion of the SPOUSE PT VET STAT IND field.

(4) **ADD (Date).** Enter the applicable date for adding the dependent to the veteran's award. If the benefit is to be paid from the initial date of the award under original award processing, the ADD (Date) field can be left blank. The system will then include payment from the earliest award date.

(5) **RSN (Add Reason Code).** Enter the applicable reason code.

(6) **CHG STAT (Change of Status Date).** Enter actual change of status date; e.g., grant or removal of spouse's aid and attendance, apportionment granted, etc.

(7) **RSN (Change of Status Reason Code).** Enter the applicable reason code.

(8) **REMOVE (Remove Date).** Enter the actual date of event; e.g., death, divorce, etc.

(9) **RSN (Remove Reason Code).** Enter the applicable reason code. Acceptable codes include 15 or 22 for a spouse and 22 for a parent.

(10) **APPOR (Apportionment).** Enter "Y" if an apportionment is to be established. The system will display an "X" if there is an existing apportionment. If an existing apportionment is to be discontinued, enter "N" in the field.

(a) Use of "Y" will provide for generation of the primary award if the apportionment is only for a single child or for any combination of spouse and parents. In all other instances, the primary award must be entered on the 403 award screen.

(b) Use of "Y" for a single child birth segment will result in the deletion of that segment from the master record; however, when more than one child is to receive an apportionment each birth segment must be manually deleted.

(11) **CHILD DOB (Date of Birth).** Enter the child's date of birth.

(12) **COR (Correction of Children Data).** Entry is required to correct existing master record children data whenever the existing data are inconsistent with the additional amount of benefits being paid for any child. If a child's birth segment is to be added, enter the plus sign, and if a segment is to be removed, enter the minus sign.

[NOTE: The COR field is only for use when, upon screen display, either the error message "CHILDS BIRTH DATA MISSING—MR DEP THIS XX" or "CHILDS BIRTH DATA SURPLUS—MR DEP THIS XX" is displayed.]

(13) **NAME.** Enter the child's given name (field limited to 10 positions).

(14) **STAT (Child Status Code).** For each child, enter the applicable status code. (See app. C.)

(15) **ADD (Child and Date).** Enter the date from which the child is to be added. For original award processing if payment is to be from the initial award date, the system will generate the applicable date if the field is left blank. The system will then include payment from the earliest award date applicable.

NOTE: Should it be necessary to provide payment for more than 10 children, enter birth data for the oldest children.

(16) **RSN (Child Add Reason Code).** Enter the applicable reason code.

(17) **CHG STAT (Child Change Status Date).** Enter actual date of event.

(a) A date of marriage or death is to be entered in this field *only* for supplemental claims, as entry in this field will result in the removal of the child as of the end of the year.

(b) If entry as a school child is applicable, but entry into school is prior to attainment of age 18, then enter the child's 18th birth date.

(18) **RSN (Child Change Status Reason Code).** Enter the applicable reason code.

(19) **REMOVE (Child Remove Date).** Enter the actual date payments for the child are to be discontinued.

(a) A remove date because of marriage or death is to be entered in this field *only* for claims entered using original award processing.

(b) This field may, as an exception, also be used to provide for adjustment in the status of the child's award from that of a school child to a helpless child when reason code 55 is used.

(20) **RSN (Child Remove Reason Code).** Enter the applicable reason code.

(21) **APPOR (Child Apportionment Indicator).** Enter "Y" for the grant of an apportionment under generated award processing.

(22) **SPOUSE: NAME.** Enter spouse's given name.

(23) **SPOUSE: SSN.** Enter spouse's social security number.

(24) **SPOUSE: PT VET STAT IND.** Enter "1" in the first position of the field if the spouse is a veteran and service was during WWI or Mexican Border Period, or "2" if the spouse is a veteran of a later war period. Enter "S" in the second position if the spouse is receiving a separate payment.

(25) **SPOUSE: CRF (Cross-Reference File No.).** Enter the spouse-veteran's VA file number, if any.

(26) **ADDNL CHILDREN—TOTAL/THIS.** If more than 10 children are a factor, enter the additional total number of children and the total number to be included for payment on this award.

(27) **TOTAL W/H (Withholding Amount).** Enter the total amount of the award to be withheld for apportionment.

15.20 INCOME DATA—GENERAL

a. Income Entry—Complete Income Information. Income award processing requires an itemization of the specific and complete income information from all sources and any deductible expenses upon which the annual net countable income is

determined. This includes the payee's (and/or spouse's and/or children's) monthly rate of social security, when involved. The data for payee 00 and 10 awards will be maintained in a master record "optional" income segment, with child's income retained in the child data segment.

(1) This complete income information must always be supplied on original or reopened awards. Entry on amended awards is required only when these data are changed.

(a) Data, supplied with awards, will generally be updated by data obtained as part of the annual income questionnaire processing (pars. 9.34g(2) and 9.37g(2)).

(b) Changes in these data may also be made as provided in subparagraph b below.

(2) Complete income data for input (determined as provided in subpar. b below) will be entered on the income screen as follows:

(a) For the payee (veteran, surviving spouse, parent or separate children's award), enter:

1. The amounts (dollars and cents) as reported for "Monthly Social Security" (gross monthly benefit, before deduction for any medicare premium). *NOTE: Monthly annuity is to be entered but it is not stored and is not redisplayed.*

2. The annual income as entered in the fields "Earnings," "Social Security," "Other Annuity or Retirement" and "Other Income" (will be in *dollars only* up to five digits). All cents will be dropped, without rounding to the next higher dollar. Prefix zeros are not required. If there is no income from *any* of these sources, the "No Income" indicator will be used.

3. Type of "Other Annuity or Retirement" (will be coded as follows: C—U.S. Civil Service Retirement; M—Military Retirement (including Survivors Benefit Plan annuity or RSFPP for Improved Pension to a surviving spouse of the deceased serviceperson); R—Railroad Retirement; O—Other, State or local government civil service retirement, insurance annuities, endowments, etc., or a combination of any of the above sources).

NOTE: For a child's award, the surviving spouse income screen 306 will be used to enter custodian income. The No Income indicator is for use when custodian income is not a factor due to either no income or there is no custodian as in the case of a child over the age of majority. (See par. 15.22d(10).)

(b) For the spouse in veterans' or custodian spouse pension cases, with the exception of Old Law cases, enter data, if any, in the fields for the spouse, following the above rules.

(c) Enter any expenses which are excluded as "Deductible Expenses." (See par. 9.46 re determination of allowable deductible expenses.) Inasmuch as Improved Pension considers family income, all deductible medical expenses for those persons included in the award will be entered on either the 306 income screen or the 336 screen for any children's medical expenses.

(3) Computer processing for Improved Pension, Section 306 pension and Parents DIC cases will deduct the amount of medical expenses which qualify. (See par. 9.46.)

(a) The net countable annual income for Improved Pension cases is computed by adding the payee's spouse's and children's net countable incomes and subtracting the allowable amount of deductible expenses which qualify. This result is established as the IVAP (Income for VA Purposes). (See par. 9.46.)

(b) IVAP is compared for consistency with the appropriate "Income Amount" award line entry on the award screen.

b. **Subsequent Changes.** Changes in income amount and complete income data may be introduced by entry on the applicable income screen, if award action is not required, to input transaction 49S to change the data in the income segment.

NOTE: Transaction 49S alone will NOT effect an automatic award adjustment, nor will it effect a change in the "Income Amount." Changes in both income amount and complete income data may also be introduced by the processing of approved annual income questionnaires and by use of transaction 49D or 49Q. (See also pars. 9.25g(2) and 9.28g(2) re automatic award adjustment and use of transactions 49D and 49Q.) Complete the applicable income screen and enter 49D, S or Q in the Next Screen field.

(1) "Income Amount" entries for amended awards will be made only when any of these data are changed. That is, income, by source, will be required for an amended award only when the income segment must be updated to reflect a change in income for the end-of-month as provided in subparagraph c below.

(2) On any amended award in which a change in income data is to be effected, the "Income Amount" entries must be made as provided above even though the change in reported income may affect only one period; retro, current or future. For example, if the change is only in a retroperiod, entry of the income amount for the current (and, if differing, future) period will also be required even though this may constitute a repetition of existing master record data. (Also see par. 9.47.)

(3) When there is continuing entitlement and the beneficiary's annual income for the prior end-of-month was other than that previously reported, this information will be entered on the award line providing for the retroactive rate change or, if there is no retroactive change, as "Remarks."

(4) For determination as to the need for and entry of complete income information to support an amended award, see paragraph 9.44.

c. **End-of-Month for Which Complete Income Information Is To Be Entered.** Although "Income Amount" entries will be made on one or more award lines, as required in subparagraph a above, to justify the rate authorized by specific award lines for computer audit, there will be only one complete income segment furnished and maintained in the master record at any one time. However, for generated award processing, complete income data must be entered for all periods subsequent to the earliest period, if any, for which income is to be change.

NOTE: The income screen can be used to compute the IVAP for retroactive periods, even if there will not necessarily be any award adjustment.

(1) **IQ Cycle Year**

(a) Normally, the complete income data for input should be consistent with the basis for the "Income Amount" for the current line.

(b) In order to ensure computer program recognition for which the income information is furnished (and since these data are generally obtained and updated in the processing of each year's income questionnaires), this recognition must be related to the "IQ Cycle Year" as determined in the following subparagraphs.

(2)**Computer Audit and Consistency Check.** In addition to determining whether the "Income Amount" for each award line justifies the rate authorized on THAT specific award line, computer audit also computes the IVAP from the complete income data and compares it with the "Income Amount" for the current year award line(s) and all future award lines unless there is a special law code 14 or 18 entered on an Improved Pension or Parents DIC award. When these data do not agree, the audit provides for issuance of Msg Code 859, INCOME INFORMATION INCONSISTENT WITH INCOME CODE, or if the inconsistency is related to (or due to the absence of) a required future award line, the word "FUTURE" is appended to the message legend.

(a) **Accounts Not Under IQ Control.** Beginning with October cycle processing, in any "New Case" (introduced by original or reopened award subsequent to the EOM September IQ Selection Run) or in any account for a payee age 72 or older exempted from IQ selection (Old Law and Section 306 pension), the complete income data input on the latest 306 screen separately as a transaction 49S will be considered as supplying income for the forthcoming "expected" year; i.e., in these cases the IQ cycle year will be cycle 0 October through the last processing cycle in September of the following year.

(b) **Accounts Under IQ Control—Improved Pension And Parents DIC**

1. For any IQ (13Q or 40 series) transaction processed into cycle 0 November in a calendar year through the last May cycle of the next calendar year, the IVAP will be audited against the "Income Amount" for the award line covering payment for the forthcoming "expected" year; i.e., for IQ transactions (in a case under IQ control) the IQ cycle year begins with 0 November. The months of June through October are "Non-IQ" months; i.e., no IQ transactions will be accepted except TR45. (See par. 9.22b(1).)

2. For any amended award (TR 13C) or separate 49S transaction processed during the entire calendar year, the audit of the IVAP will be made against the "Income Amount" for the current calendar year; i.e., for the non-IQ transactions (in a case under IQ control) the IQ cycle year coincides with each calendar year. (See par. 9.10b(1) re use of special law code 18.)

15.21 NET WORTH

a. **Section 306 Pension Cases and Improved Pension Cases.** In all original and reopened awards of Section 306 pension (except to apportionees); i.e., when net worth is a factor, the two-digit code (app. C) representing the net worth will be entered in the field provided on the income screen for the veteran or surviving spouse, or child (and of the custodian in Improved Pension cases when there is no surviving spouse). Entry of this datum in amended awards or by use of CORR provision, will be required only when there is a change in net worth and consequent redetermination (formal or informal) of *continued* entitlement has been made. (See pars. 9.13 and 9.51.)

b. **Death Compensation to Parents.** Entry will be required, as provided in subparagraph a above, in awards of death compensation to parents when these data are factors; i.e., when the conclusive presumption of dependency provided by VAR 1250(A)(1) cannot be applied and a determination or redetermination of continuing entitlement is made under VAR 1250(A)(2). (See pars. 9.16 and 35.12.)

15.22 INCOME REPORT — SCREENS 306 AND 336

a. **General.** There are four screens provided for entry of income data. They consist of three 306 screen formats, one each for veterans, surviving spouses or custodians and parents. The 336 screen is for reporting children's income for Improved Pension. The 336 screen is only used to supplement income reported on a 306 screen; i.e., the parent or custodian's income is to be reported on the 306 screen and then any children's income is to be reported on the 336 screen. Should a child be paid direct, the No Income indicator will be entered on the spouse or Custodian 306 screen before entering the child's income on the 336 screen. A maximum of 10 repetitions of each income screen are provided for use in retroactive or future adjustments.

b. **Income Computation.** Once complete income data have been entered on the income screen(s), the Enter key is to be depressed. The system will then calculate the IVAP. The screen may then be redisplayed (use of BSP) to review the IVAP computed by the system. If child's income is a factor then that income must be entered on the 336 screen before the correct IVAP can be generated. (For complete instructions on consideration and evaluation of income, see ch. 9.)

NOTE: Award processing will be for Improved Pension or parents' DIC unless entitlement to another benefit; i.e., Old Law, Section 306 pension or parents' Death Compensation, is indicated.

c. **Supplemental Income Adjustments.** The current master record income data will be displayed for amended award processing on the applicable 306/336 screen when accessed.

(1) **Current Adustment.** If the change in income is only for the current income period, enter the revised income data.

(2) **Retroactive Adjustments—Generated/Input Awards Processing.** If the income for any prior period is to be adjusted, enter the earliest date on the income screen for which income is to be adjusted, and then enter all subsequent effective dates through the current date. Income for subsequent periods which remains unchanged requires no entry, except for entry of the date for which the income applies.

NOTE: For Old Law and Section 306 pension the current income data in the master record will be displayed on each subsequent income screen. For Improved Pension and Parents DIC, after the initial master record display each subsequent screen will have the preceding screen's income data displayed.

d. **Screen 306—VETERANS, WIDOW(ERS)/CUSTODIAN, PARENTS INCOME**

(1) **DATE.** Enter the effective date for the income report.

(2) **IQ INDICATOR.** Enter an "X" or "Y" if a 13Q transaction is applicable.

(3) **ELECTION (Benefit Election).** Enter an "X" for an election of Improved Pension from a protected pension benefit.

NOTE: Do not use this field for any other benefit election, otherwise the Target System will generate a letter containing erroneous information.

(4) **SECT 306.** Enter an "X" or "Y" if the benefit payment is to be Section 306 pension.

(5) **OLD LAW.** Enter an "X" or "Y" if the benefit payment is to be Old Law pension.

(6) **DEATH COMP.** Enter an "X" or "Y" if the benefit payment is for Parents Death Compensation.

(7) **ORIGINAL, REOPEN FROM: TERMINATION, DISALLOWED (Transaction Type Indicators).** For original and reopened awards, enter an "X" or "Y" in the applicable field. An amended award will be assumed if all other indicators are left blank.

(8) **STATUS.** On the parent's income report screen, enter an "X" or "Y" in the appropriate marital STATUS field. Entry is only required to change or establish the parents dependency codes. If a master record exists, the status shown in the master record will be displayed.

(9) **SPOUSE.** Enter an "X" or "Y" if income of the veterans's spouse is to be entered. This item will be displayed if a spouse is shown in an existing master record, and can be changed if applicable.

(10) **NO INC.** Enter an "X" if the reportable income is zero for a veteran, spouse, parent(s) or child.

(11) **NET WORTH.** Enter applicable numeric code for net worth. (See app. C.) On the parent's income report, entry of net worth is only to be made if the benefit to be paid is death compensation.

(12) **EARNED.** Enter the amount of earned income, if any.

(13) **SOC SEC.** Enter the annualized or yearly amount and the applicable gross monthly amount of social security, if any. If the annual/yearly amount is left blank the system will multiply the monthly amount by 12 and compute the annual/yearly amount.

[NOTE: If there is an existing M/R, the system will display the current monthly amount of social security.]

(14) **ANNUITY TYPE.** Enter the annuity type C, R, M or O, the yearly or annual amount and applicable monthly amount, if any.

(15) **WAIV.** If award is to be for Old Law pension and the veteran waives civil service annuity, enter the applicable amount.

(16) **INTEREST.** Enter the amount of interest income, if any.

(17) **INSURANCE.** Enter the amount of insurance income, if any.

(18) **OTHER.** Enter the total applicable amount of income from all other sources, e.g., unemployment compensation or rental income. If a master record exists, the system will display all interest, insurance and other income as OTHER.

(19) **EXP: MEDICAL, LAST, EDUCATION, FAMILY, SOC SEC, OTH RET.** Enter the amount of countable expenses, as applicable. (See ch. 9.) *NOTE: Last expenses paid by any child are to be entered on the 306 screen.*

(20) **SOC SEC NO.** Enter the social security number(s), as applicable.

(21) **PL 95-588, SEC 306, OLD LAW, DIC IVAP.** The applicable IVAP's will be displayed for initial input or a change in income. The IVAP can be reviewed by entering BSP in the NEXT SCREEN field.

(22) **MIW Indicator/RSFPP Amount/SBP DUE.** Enter an "X" or "Y" if MIW is a factor and enter the RSFPP amount in the RSFPP field. The amount of SBP due will then be displayed. Use BSP entry in the next screen field to review SBP amount.

e. **Screen 336 Children's Income**

NOTE: A 306 screen income report must be completed in conjunction with the 336 income report.

(1) **NO INCOME.** Enter an "X" only if the total amount of all children's income is zero.

(2) **NAME.** If displayed blank or incorrect, enter each child's name regardless of amount of income or net worth.

(3) **DOB.** The date of birth for each child is displayed from either the 304 screen or the master record as applicable. Any change or correction of these data may be made only on the 304 screen.

(4) **NET WORTH.** Enter the applicable net worth code for each child. (See app. C.) If any child's net worth is in excess, enter XS for that child's net worth. If any child's income is determined to be in excess of the applicable income limitation the system will display XI in the net worth field. XI can only be entered in the event there are last expenses paid by the child which were entered on the 306 screen immediately preceding this 336 screen.

(5) **EARNED.** Enter the amount of earnings for each child.

(6) **MONTHLY SOC SEC.** Enter the applicable monthly amount of social security.

(7) **ANNUAL SOC SEC.** Enter the applicable annual amount of social security if the system computation will not be correct.

(8) **OTHER.** Enter the annual total of any other applicable income.

(9) **EDU EXP.** Enter the amount of any applicable education expenses.

(10) **MED EXP.** Enter the amount of any applicable medical expenses.

(11) **ADDITIONAL.** The total number of additional children, if any, is displayed from either the 304 screen or the master record as applicable.

15.23 SPECIAL CONDITIONS DATA ENTRY—SCREEN 401 [ ]

a. **General.** The special conditions screen provides for entry of data essential to generated award processing, [and establishment in the master record of certain statistical data. For an existing award, when any special condition item is contained in the master record, an "X" or other appropriate data will be displayed in the applicable field.]

b. **Screen 401, [ ] SPECIAL CONDITIONS**

(1) [**A&A (Aid and Attendance—non-service-connected and death cases).** When A&A is payable under VAR 1351(C)(2) because of nursing home patient status or for any death case, enter an "X" in the A&A field and the effective date in the FROM date field. When payment is to be terminated enter the effective date in the TO date field. (See par. 50.35b.)]

(2) [**H/B (Housebound).** When housebound is payable to the surviving spouse, enter an "X" in the H/B field and the effective date in the FROM date field. When payment is to be terminated, enter the effective date in the TO date field.

NOTE: See paragraph 15.19b(3) if the veteran is to be granted additional benefits because of the spouse's need for A&A or if the spouse is housebound.]

(3) [**DRILL PAY WAIVER.** When the veteran's payments are to be withheld because of receipt of active or inactive duty training pay, enter an "X" in the first DRILL PAY WAIVER field and the number of days for which disability benefits are to be withheld in the second field. (See ch. 29, subch. VI.)]

(4) [**SLC (Special Law Code).** A maximum of two special law codes can be entered. The acceptable special law codes are 02, 03, 04, 05, 06, 07, 09, 11, 12, 15, 16, 19 and 20.]

(5) [**DIARY REASON.** When a master record diary control is to be established, enter the applicable diary reason code and the control date (month and year). (See par. 1.12b.)]

(6) [**MEDAL OF HONOR.** When payment of the Medal of Honor pension is payable, enter an "X" in the first field and the effective date for payment in the second field. When this field is used, the system will generate special law code 01.]

(7) [**DISAB SEVERANCE.** For original award processing the amount of disability severance will be displayed from the BIRLS data, if present. If applicable, an incorrect amount which is displayed is to be corrected or established if not displayed. If an entry is made, the BIRLS record should be updated by use of the BUPD command.]

(8) [**READJUSTMENT—75%.** For original award processing the amount of readjustment pay will be displayed from the BIRLS data, if present. The system will also compute and display 75 percent of the total amount. If applicable, an incorrect amount which is displayed is to be corrected or established if not displayed. If an entry is made, the BIRLS record should be updated by use of the BUPD command.]

(9) [**TORT AWARDS.** If applicable, enter the amount of the tort settlement under 38 U.S.C. 351.

NOTE: When an amount is displayed from the master record for disability severance, readjustment pay or a tort balance, that field is protected and the amount cannot be changed using the 401 screen. Any change to an existing deduction balance must be made by the Finance activity.]

(10) [**VA HOSP—N/H (VA Medical Center or Nursing Home Care) VA DOM (VA Domiciliary).** When reduction of benefits is required because of hospitalization enter the date of admission in the FROM date field and an "X" in either the VA HOSP—N/H or VA DOM fields to effect reduction:

(a) Should there by any period(s) of absence during hospitalization, it may be necessary to determine the aggregate number of days of hospitalization, and then enter the appropriate date of reduction in the FROM date field (see par. 25.13). "X" must then be entered in the IMMEDIATE field to effect reduction as of the FROM date entered.

(b) The IMMEDIATE field is always for use in any instance where reduction is to be effective as of the date entered in the FROM date field; e.g., readmission within 6 months of a prior period of hospitalization during which a reduction was necessary. (See par. 25.15.)

(c) When the date of discharge from hospitalization or care is known, the date is to be entered in the TO date field to restore benefit payments, as applicable. (See par. 25.15.)

Entry of the FROM date must also be made for the TO date entry to be accepted.]

(11) [**$1500 ESTATE LIMIT**

(a) When an incompetent veteran whose benefits are subject to reduction under VAR 1557, is hospitalized at VA expense and the veteran's estate exceeds $1,500, enter an "X" in the $1500 ESTATE LIMIT field and the date the veteran's estate exceeded $1,500 in the FROM date field to effect reduction.

(b) When the veteran's estate is reduced to $500 or less enter the applicable date in the TO date field to restore benefit payments. Entry of the FROM date must also be made for the TO date entry to be accepted.]

(12) [**PFOP W/H—AMT.** When an institutional award to an official of a non-VA hospital is to be made, enter an "X" in the PFOP W/H field and the amount to be withheld from the monthly rate in the AMOUNT field. For establishment of the award enter the effective date of reduction in the FROM date field, and for termination of an institutional award enter the applicable date in the TO field. Entry of the FROM date must also be made for the TO date entry to be acceptable.]

(13) [**RET PAY W/H (Retired Pay Withholding)—AMOUNT, FROM and TO dates (Two Sets).** Enter the amount of compensation to be withheld and the FROM date for when the award is to be adjusted and the TO date for when withholding should be discontinued. Dates cannot be more than 2 months greater than the end of the current month in which the dates are entered. When this field is used the system will generate special law code 06.]

(14) [**BRANCH.** If not displayed, this branch of service must be entered. Acceptable service code entries are as follows:

Branch of Service Code	Service
Army or A	Army
Navy or N	Navy
M	Marine Corps
CG	Coast Guard
PHS	U.S. Public Health Service
AF	Air Force
RPS	Regular Philippine Scouts
WAC	Women's Army Corps
NOAA	National Oceanic and Atmospheric Administration

Branch of Service Code	Service
AAC	Army Air Corps
SPS	Special Philippine Scouts (pesos only)
CA	Commonwealth Army (pesos only)
GCS	Guerilla and Combination Service (pesos only)
RSS	Regular Scout Service combined with Special Philippine Scout Service or Commonwealth Army Service (dollar and pesos payments).]

(15) [**EFFECTIVE DATE** (Death Cases). The computed effective date is displayed based on date of veteran's death, date of claim and whether or not death was in service. That date will be the effective date of the award unless the date is changed.]

(16) [**DIC PAY GR.** If the displayed pay grade is incorrect, it is to be corrected, or if it is not displayed, it is to be entered.]

(17) [**MIN RATE.** If payment of the surviving spouse's award of DIC is to be made at the minimum rate applicable, enter "X" in the field. Entry in this field will result in appropriate notification being furnished in the Target award letter.]

(18) [**RATE MO OF DEATH.** The rate payable for the month of death is displayed if the pay data are available from the veteran's type E master record. If the amount displayed is incorrect, or is not displayed, enter the applicable amount. If multiple rates are payable for the month of death, an input award must be entered on the 403 screen.]

(19) [**DIC.** Entry of an "X" is required for payment of DIC under generated award processing.]

(20) [**RCD PURPOSE DIC.** Entry of an "X" is to be made for the surviving spouse's award as applicable.]

SUBCHAPTER III. AWARD PREPARATION—INPUT AWARDS

15.24 DISABILITY/DEATH AWARD DATA—GENERAL—SCREEN 403

a. Normally, awards processed under the Target System will be generated using the support data entered into the system. However, in the event it is not possible to utilize the generated award capability, an input award is to be entered on the 403 screen using CADJ authority. When an input award is required, all support data must also be entered (Rating, Income, Dependency and Special Conditions) on the applicable screens.

b. The first award line on *each input award* must be *fully* completed with entries for Change Reason Code, Dependency, Effective Date, Entitlement Code. The entry for any other award line data (Total Award, Annual Income, Special Law and Withholding) must be entered if a factor. Successive lines on *that* award will require entry in only the Change Reason and Effective fields columns and, if changed from the preceding line, the changed data in the remaining fields.

c. **Limitations—Number of Award Lines**

(1) Award input on the 403 screen is limited to a maximum of 16 award line entries (retro, current and future).

(2) If the maximum input limit is exceeded with entries of only retroperiod award lines, and without the basic minimum as required in subparagraph d below, the award will be prepared for special processing (par. 15.13).

d. **Omission of Award Lines—Use of Additional Futures Code "D".** Each award must provide the basic minimum award data as required in the following subparagraphs. When an award exceeds the 16 available award lines on the 403 screen, the additional futures code "D" will be entered in the "Change Reason" field as the only entry on the last award line following the last complete award line entered, to indicate the omission of one or more future rate changes, when permitted under the following rules:

(1) **Basic Minimum.** Subject to the provisions of the following subparagraphs, as a basic minimum, awards must furnish all award lines, starting with the commencing date of the award or effective date of change. When a complete award exceeding 16 lines will involve more than one future award line, the award being prepared will provide at least one future award line with an effective date beyond the current year, but in no event less than 3 months subsequent to the date the award is processed.

(2) **Minimum Data for Disability Awards.** In original or reopened veteran awards, the current and all future rating data are required as basic minimum data entered, together with the corresponding award line needed to change the rates of payment required including all other interim rate changes.

(3) **Apportioned Cases.** If the basic balancing of-awards requirement is met, it will not be necessary that the primary and apportionee awards provide for identical future effective dates, but the maximum number of award lines should be entered using the 16 available award lines. If there are additional futures, these may require entry of code "D" on only the primary award, or apportionee award, or both.

(a) If the total award amount for the case remains the same, and the amount withheld in the primary (veteran or surviving spouse) record also remains unchanged or is equal to or greater than the total of the amounts authorized to all apportionees for all periods involved, the apportionee awards may provide for interim future rate changes (including terminations) as of effective dates not contained in the primary record.

NOTE: In apportioned disability cases, the updating of the type H (termination) future in the veteran award will effect a simultaneous termination of the apportionee award (par. 17.02d).

(b) Computer processing provides an audit balancing routine, constructing futures of equal effective dates missing in any record in the case to match those povided in less than all the records for that case. Appropriate messages will be issued for any out-of-balance situations. (See also pars. 15.34c and 26.02b.)

(4) **School Children.** Awards providing benefits on account of children over age 18 on the basis of school attendance must not be abbreviated short of the effective date of the reason 25 line reflecting the reduction (or termination) required to reflect the scheduled end of such benefits.

e. **Computer Processing of Additional Futures Code "D."** When this code is encountered, a special H future segment with reason code 49 will be created to place the account in suspense the first of the third month after the effective date of the last future award segment in the master record.

(1) Master record writeout, Msg 872—NEEDS ADDITIONAL FUTURES, indicating that the case requires additional future date information, will be issued as notice of the projected suspense unless the necessary award is introduced before the updating cycle for the reason 49 line.

(2) If the additional data are not introduced timely, the award will be suspended and computer notice (Msg 698—CASE SUSPENDED NEEDED MORE FUTURES) issued indicating that the suspense has been effected, showing the date of first payment for local award action to supply the additional future rate change(s), as provided below.

f. **Supplying Omitted Futures.** The additional future(s) omitted from the award and which cannot be automatically generated will be furnished upon receipt of the computer Msg 872 notice that such is now required by amended award on the 403 screen.

(1) The first award line must repeat the rate and effective date of the last future rate change established on the prior award. This will be followed by the additional future rate change(s) to meet the minimum requirements.

(2) In apportioned awards, this may require simultaneous awards to the veteran or surviving spouse and each apportionee, as necessary, to meet the basic audit requirements for balancing amounts withheld with amount payable.

g. **Notice to Payee When Futures Are Omitted.** The monthly rates and effective dates entered on the award screen under the foregoing subparagraphs will be shown if a dictated award letter is required. (This information is provided for automatic inclusion in Target generated award letters.)

(1) When less than all future rate changes are entered through the use of code "D," a statement, similar to the following, will be included on the letter or attachment:

"There will be additional adjustments in the monthly payments under this award beyond the last date shown. You will be informed of any additional future change before it becomes due."

(2) The payee will, or course, be fully informed by letter at the time any subsequent adjustment is made, as provided above. (See also par. 15.11.)

15.25 TOTAL AWARD

Completion of total award is only required in the event a nonstandard rate is to be paid. The total award will normally be generated by the system.

15.26 MONTHLY RATE

a. The monthly rate authorized, if any, will be generated for each award line. (Also see par. 15.34 re withholding entries). Monthly rates will be generated for primary payees of Improved Pension cases and each of the following benefits provided the effective date for the award line is not earlier than the date specified:

Disability compensation 08-01-72
[ ]
DIC surviving spouses and children 01-01-72
[ ]

(Through condensation of material, page 15-30 is now blank.

b. A termination or "no-rate" period will be entered as a zero rate effective as of the first day of nonentitlement, with appropriate termination reason code as provided in paragraph 15.28.

15.27 EFFECTIVE DATE

a. General. The effective date as required by existing regulations and directives, will be entered for award line.

(1) Dates will be entered in any of the appropriate formats.

(2) The effective dates entered will be the first day of entitlement (or nonentitlement, in case of terminations or periods of nonpayment) to the monthly rates authorized.

b. Commencing Date

(1) **Original or Reopened Awards.** Original and reopened awards will be made with any required commencing date, subject to the following restrictions:

(a) Commencing date must not be further in the future than the 1st of the 3d month following the processing month. (But see par. 9.05 limiting prospective pension and DIC parent awards.)

(b) If the future award involves a reestablishment of withholding for PFOP, section 351 offset, readjustment or severance pay (type 3, 6, 7, 8 or 9), it should not be authorized for processing in any cycle prior to the first processing cycle of the month in which the withholding is to become effective. (See also pars. 28.07e(6) and 29.43d(2)(e).)

(c) Except as provided for reopened awards to effect an earlier termination (par. 17.01a(1)), the first award line must *not* be a "zero rate" line. (Computer processing of an award with the first award line effective as of a future date, will establish a running award master record with a zero amount for net award effective the first of the processing month, followed by the future date segment established from the first line on the award and such other futures as may be furnished by the award.)

(2) **Amended Awards.** The first award line of an amended award may be any required date, retroactive, current or prospective, effecting a change in an active award, except as provided in subparagraphs (b) and (c) below.

(a) **General.** The effective date of the change (first award line) should be the date from which the new or changed rate (or zero rate, if appropriate) is effective; EXCEPT that a future commencing date must not be subsequent to the effective date of an existing termination future.

1. Automatic increases made prior to the effective date of change in the amended award and not shown by a previous award will not be required entries on the current amended award SOLELY for record purposes.

2. Amended awards with future effective dates (subsequent to the end of the current processing month) will result in the establishment of type E future award segments in the master record.

3. Future award segments (types E and H) in the existing master record with an effective date equal to or later than the commencing date of the amended award, will be purged and replaced by the new future data, if any, introduced on the amended award. However, if there is no accompanying rating transaction, existing future rating segments (type F) with effective dates within the time frame of the new futures (i.e., not beyond a new termination date) will be retained and, as unchanged rating futures, need not be reintroduced. Only new or changed rating data will be required for entry.

(b) **Effective Date of Change in Current Month.** For computer acceptance and successful processing of an amended award to effect a rate change as of a date in the current processing month, when there is an already scheduled rate change previously established in the master record as of a date in that same month, the first award line on the amended award must be not later than the 1st of the current month.

(c) **No-Rate Period.** The first award line may provide for a no-rate or nonpayment period, by entry of the monthly rate as a "zero"; that is, an account may be retroactively adjusted to create an over-payment over a previously paid period or, when the account has been in suspense and (in complying with the following subpar. (d)) no payment is to be made from the date of suspended payment up to the date of resumption payments.

NOTE: When the current award action has the effect of creating an overpayment, the "Remarks" block of the award print will contain the statement "Overpayment Created" for local reference. (See par. 15.07b.)

(d) **Amend Resuming Account in Suspense.** The effective date of the first award line of an amended award resuming payments in a suspended account must not be later than the date of last payment at the time of resumption (as backed up returned checks); this may require the entry of a zero rate for any "retroactive" award line for any period for which no payment is to be made by this amended award resumption of payment only from a date subsequent to the date of last payment. If a specific reason code is not required (i.e., if there is no change in award data when resumption is effective as of the date of last payment) reason code 29 may be used for this first award line.

c. **Ending Dates in Awards.** The "effective date of discontinuance" or "date o last payment," as used in the VAR 1500 series and procedural issues, means the last day of entitlement through which payment is made. To effectuate this for computer processing, the 1st day of non-entitlement will be entered as the effective date, with zeros entered as the monthly rate (par. 15.26). The appropriate termination reason code will also be entered as the corresponding entry on the same line in the change reason code field.

(1) **Awards Subject to Income Limitations.** Except when there is a child held permanently incapable of self-support:

(a) When a pension award is made to a veteran or a surviving spouse, with a child or children and the annual income is at a rate in excess of the maximum applicable to a veteran or surviving spouse alone, the award will be prepared to show a future ending date effective as of the date entitlement for the (last) child terminates (VAR's 1503(A) and 1667(C)). (But see par. 15.24 re use of additional futures code "D.")

(b) When an Improved Pension award is made to a family unit and the annual income is such that the scheduled loss of a dependent will cause the annual countable income for the remaining members of the family unit to exceed the applicable maximum annual pension rate, the award will be entered showing a future ending date effective the date of the dependency loss. (But see par. 15.24 re use of additional futures code "D.")

(c) An award to a veteran, surviving spouse, child or parent subject to income limitations will also be entered showing a future reduction or termination date, because of anticipated increase in income (par. 9.05). (See also par. 15.20 re entry of income data.)

(2) **Awards for Child Alone.** When an award is made to or on account of a child alone (or to or for children as a consolidated award), the award will be entered showing a termination date, effective as of the date of the child's (in consolidated awards, the youngest child's) 18th or school child's 23d birthday, or the 1st day of the month following the month within which completion of an approved course of school is anticipated, whichever is appropriate. However, awards will not be made to provide for payment to fiduciaries only by reason of a child's minority, or for any period subsequent to the child's attainment of majority under the laws of the State in which the child resides. Awards to or for children permanently incapable of self-support will not provide for an ending date. (See par. 12.04 for control action required.)

(3) **Data Required on Terminating Award Line**

(a) Annual Income—see paragraph 15.33b.

(b) Change Reason—see paragraph 15.28.

(c) Dependency Code—see paragraph 15.29.

d. **Ommission of Future Award Lines.** See paragraph 15.24 re use of additional futures code "D."

15.28 REASON CODE

The code (app. C) indicating the reason for the change in rate, or termination or effective date will be entered on each award line. Instructions throughout this manual specifying the reason code to be used in specific instances must be followed precisely, because certain computer functions are geared to these codes. (See also par. 9.10b(1)(a) re use of reason code 96 for the first award line when applying special law code 18, and ch. 16 re codes in disallowances.)

a. The field for change reason code will also be used for entry of additional futures code "D," as explained in paragraph 15.24, on the award line immediately following the last future award line.

b. A correction or change in the current or any future reason code in the master record may be accomplished by appropriate master record correction using the CORR function.

c. Although reason code 29 (Other) is a valid code, unless specifically authorized for particular instances, its use must be restricted to those changes which cannot be assigned any other established reason code (e.g., see par. 15.27b(2)(d)). When code 29 is used, the exact reason will be set forth as "remarks" on the award document.

15.29 DEPENDENCY CODES

The dependency codes (app. C) are required to indicate the number of persons, by their class or classes (i.e., the veteran, or relationship to the veteran) as they affect the rate authorized by the specific award line (total dependency) under this award (this dependency). Entry of these codes will be made in accordance with the instructions provided in this paragraph, as further explained in paragraph 23.06 (for disability awards) and paragraph 38.04 (for death awards).

a. **Dependency Total Award.** Entry of the appropriate code must be furnished in this field on each award line.

(1) This code is required to identify the number and class(es) of all persons whose established existence was considered in determining the total amount payable; that is, those to or on account of whom payment is being made under this or another (apportioned) award, or for whom a share is being withheld pending claim or development. For example:

"00"-Veteran only

"10"-Veteran and spouse (or, in a spouse or surviving spouse award, the spouse or surviving spouse only)

"11"-Veteran, spouse and one child or surviving spouse and one child

"20"-Veteran, spouse and father

"21"-Veteran, spouse, father and one child

"81"-Veteran and one child (or one child only).

(2) In disability cases, total dependency code identifies all persons in the case.

(3) In death cases, however, as there can be separate entitlement, it identifies only the number and class(es) of person or persons for whom payment for the particular benefit is being made, which may or may not be all the persons in the case. For example, in a death case there can be a surviving spouse and a child (code 11), and separate (additional) DIC awards to each child over age 18 (code 81), and both parents (code 70).

b. **Dependency This Award.** Entry in this field is required only when there is an apportionment or, in death cases only, when the benefit awarded is being shared by another person or persons, to identify the number and class of persons to or for whom payments are authorized under this award, by this award line. Conversely stated, this field may be left blank only when the total amount payable (for all persons under the benefit awarded and identified by dependency total award) is being made under that award. If an entry in this field is required on any award line, there must be a positive entry in this field on all subsequent award lines on the award even though this may constitute a duplication of the dependency code entry in the "Total" field for such subsequent award lines.

c. **Future Termination.** No entry will be required in the dependency fields for an award line providing for termination of the award, UNLESS there is a change in dependency from that in the immediately preceding award line. For example, if terminating a veteran or surviving spouse pension award (because of excess income) due to change of status to veteran or surviving spouse without dependent (loss of last dependent) dependency code 00 or 10, as applicable, will be entered.

d. **Corrections or Changes in Dependency Codes.** An amended award will not be required for the sole purpose of effecting a correction or change in dependency code which does not involve any change in the rate authorized. In such case, a change in any master record current or future dependency code may be accomplished by correction of the file copy of the award, with use of CORR processing for appropriate master record correction.

15.30 ENTITLEMENT CODE

a. **General.** The applicable entitlement code (app. C) identifying the period of service (first digit) and type of benefit (second digit) for the current entitlement will be entered in the field provided on the current award line, including awards to apportionees. (See also pars. 38.09a and 49.10.) The entitlement code used must be consistent with the active duty dates for the entitling period of service entered as rating data in disability cases and in the award data in death cases.

b. **Two or More Periods of Service**

(1) When pension is the benefit payable, the code for the earliest entitling period will be used.

(2) When compensation is the benefit payable, use the entitlement code for the latest entitling period of wartime or peacetime service EXCEPT THAT, in disability cases, if incurrence or aggravation of the compensable disability or disabilities is attributable to only one of the periods, use the code for that period.

c. **Awards Involving More Than One Entitlement Code.** The entitlement code will always be entered in the field provided for this data on the first award line.

(1) If only the one entitlement code is applicable for all periods of entitlement, it will be necessary to enter the code only on the first award line and it will not be necessary to duplicate this entry on any succeeding award line.

(2) When there is entitlement to benefits to be shown on a subsequent award line other than that represented by the entitlement code entry for the first (which may be for a retroactive period), entry of this code will not be required for any intervening award line.

EXAMPLE: In a four-line award, if the entitlement code for the period covered by the third and fourth award lines differs from that for the first and second lines, the applicable codes will be entered on the first and third lines and the second and fourth line entries will not be required. (See also par. 39.04b re initial awards to surviving spouses at the veteran's rate for month of death.)

(3) When the entitlement change is from disability compensation to pension, or vice versa, due to change in income (rating decision not involved), rating data are to be entered to insure the inclusion of this change in current or future master record rating data (par. 49.03c).

15.31 DISABILITY STATUS

a. **General.** This field will be displayed under generated award processing; however, if an input award is required, the DISAB field on screen 403 must be completed for all veteran awards and for surviving spouse and parent awards when aid and attendance or housebound entitlement is applicable. In all other cases this field is to be left blank.

b. **Veterans' Disability Compensation.** For disability compensation awards, enter the applicable combined degree using the first three positions of the field. If special monthly compensation is a factor, enter a DASH after the combined degree entry and then the two-digit numeric SMC code; e.g., 070-01.

c. **Veterans' Pension.** On all veterans' pension awards, PT must be entered in the DISAB field. Should there be entitlement to special monthly pension, the acceptable entries are as follows:

PT-A/A (Aid and Attendance)
PT-A/H (Entitlement to A&A, but housebound paid due to hospitalization)
PT-HB (Housebound)

d. **Surviving Spouse and Parents.** The acceptable entries, when there is entitlement to additional benefits, because of the need for aid and attendance or being housebound, are as follows:

A/A (Aid and attendance payable)
A/H (Entitled to A&A, but housebound paid because of hospitalization)
HB (Housebound)

15.32 SPECIAL LAW CODE

a. **General.** The appropriate special law code will be entered on the award line first providing payment for any period(s) at a rate requiring special computer audit/edit or for statistical purposes, as explained in the subparagraphs following; otherwise, this item will be left blank (indicating the nonapplicability of any special law code introduced on an earlier award line continues to be for application). (See also subpar. b below.) Entry of a special law (and miscellaneous) code is required on only primary and secondary awards; i.e., it is not to be entered on any apportionee awards.

(1) **Code 01—Medal of Honor Cases.** This code will be required for audit/edit acceptance of the rate authorized when awarding Medal of Honor pension separately or in addition to compensation or pension benefits under 38 U.S.C. 562 (VAR 1802). (See par. 24.10.)

(2) **Code 02—Naval Pension Cases.** This code will be required for audit/edit acceptance of the rate authorized when awarding naval pension separately or in combination with compensation or pension under VAR 1803. (See also par. 24.11.)

(3) **Code 03—Forfeiture Cases.** This code will be used in a record purpose award to a veteran whose benefits have been forfeited and where payments are being made to dependents under 38 U.S.C. 3503(b). (See pars. 15.10 and 20.09b.)

(4) **Code 04—Veteran Disappeared.** This code will be used in a record purpose award to a veteran who has disappeared and benefits are being awarded to dependents under 38 U.S.C. 358. (See pars. 15.10 and 24.09.)

(5) **Code 05—Veteran Incarcerated.** This code will be used in a record purpose award to a veteran whose right to pension is barred by reason of imprisonment in a penal institution and pension is being awarded to his/her spouse and/or children under 38 U.S.C. 505(b). (See pars. 15.10 and 24.07.)

(6) **Code 06—Retired Pay Waiver or SBP (Survivors Benefit Plan) Annuity Case.** This code will be used in the award to a veteran who has waived a part or all of Armed Forces retired pay to receive disability compensation or pension under 38 U.S.C. 3105 (see par. 29.28); and in awards to surviving spouse beneficiaries receiving a Survivors' Benefit Plan annuity under 10 U.S.C. ch. 73 when the death benefit is pension to an MIW-SBP annuitant (only if the veteran died prior to September 21, 1973) or DIC to a SBP survivor annuitant (see ch. 41, subch. IV).

(7) **Code 07—Award Under 38 U.S.C. 351.** This code will be used in all awards to veterans and death beneficiaries when the disability or death resulted from hosptalization, treatment, examination or training under 38 U.S.C. 351. (See pars. 29.5 and 33.07.)

(8) **Code 08—MIW-SBP/RSFPP Old Law and Section 306 Death Pension Cases.** This code will be used when an MIW-SBP surviving spouse in an Old Law or Section 306 death pension case is also receiving RSFPP benefits (see ch. 41, subch. IV.)

(9) **Code 09—Disability Paid Under Public Law 141, 73d Congress.** This code will be used in awards of disability compensation to veterans under Public Law 141, 73d Congress, pursuant to evaluations assigned for permanent and partial ratings under the 1925 Rating Schedule and protected under VAR 1952. For example, although this code is specifically designed for the identification and audit/edit acceptance of permanent and partial ratings at the exact units percentage, if the combined degree is a fractional percentage (which is not adjustable to the next higher dollar) special law code 10 will be used instead (as an award at an abnormal rate).

(10) **Code 10—Awards at Abnormal Rates.** Entry of this code will be required on any award providing for a rate which cannot be verified by computer audit/edit.

NOTE: Awards under special acts (private laws) are identified by the specific entitlement code assigned (See table A, app. C) and do not require use of special law code 10.

(a) **Disability Compensation Cases. This code will be used**

1. On any award to a veteran at a rate which is not included in existing rate tables, or a rate resulting from a combination of benefits under the World War Veterans Act of 1924 and title 38, United States Code, which would not be possible except for the combined entitlement; and

2. On awards under the 1925 Rating Schedule when the combined degree is a fractional percentage (subpar. (9) above).

NOTE: In all disability cases, when special law code 10 is assigned, a memorandum (referral slip) directed to the Reproduction activity for preparation of a copy of the current rating for direct transmission to Compensation and Pension Service (213B), VA Central Office. (Par. 49.06a(5)) A brief written explanation is to accompany the copy of the rating.

(b) **Parent DIC and Improved Pension Death Cases.** This code, in death cases, will be used on awards to custodians-in-fact for children or parents or supervised direct payment to incompetent children or parents, at less than the full rate or share to which entitled (pars. 12.07 and 12.17b(2)). *NOTE: On surviving spouse awards, the balance of the total amount is for entry in "Withholding," obviating this use of the special law code for such instances. A copy of the award and a brief written explanation is to be sent to the Compensation and Pension Service (213B), VA Central Office.*

(11) **Code 11—General Law Cases.** This code will be used to identify awards for which the basic entitlement is under the general law.

(12) **Code 12—Awards Under VAR 1557(D).** This code will be used to identify those cases in which the total amount to which the veteran is otherwise entitled is not payable because of award(s) for cost of maintenance and or apportionment to dependent parent(s) under the provision of VAR 1557(D) (38 U.S.C. 3203(b)(2)). Amounts not payable to the veteran will be shown as a type 1 withholding (see pars. 15.34b(1)(b) and 28.17).

(13) **Code 13—Special Apportionment (Death Case).** This code will be used in death cases only, to identify awards specially apportioned under VAR 1451 (par. 39.10).

(14) **Code 14—Original or Reopened Award (Improved Pension or Parents DIC) at a First Year Rate Inconsistent With Income for VA Purposes.** This code will be used to identify the authorization of Improved Pension or Parents DIC benefits at a rate for the initial year of entitlement different from the rate payable January 1 of the following year in Parent DIC cases, or at the end of the annualized peiod in Improved Pension cases, because of a change in net countable income. The change could be due to one-time receipt of income and/or a proportionate computation of income.

(15) **Code 15—DIC Awards to Beneficiaries Having Entitlement Under 38 U.S.C. 412(a).** This code will be used to identify those DIC awards at the regular DIC rates to beneficiaries having entitlement to the special allowance under 38 U.S.C. 412(a). Entry of this code will be made only in the regular DIC award and will continue to be maintained irrespective of whether there is an additional separate award under 38 U.S.C. 412(a) to the same beneficiary as long as the probability of that additional entitlement continues (par. 40.08).

(16) Code 16—Philippine Case—Combined Pesos and Dollar Entitlement (WRO and Manila Regional Office Only)

(17) ~~Code 17—Award to Child(ren)—Surviving Spouse's Entitlement Pending. See paragraph 39.11~~.

(18) Code 18—Protected Rate—Adjustment for Increased Income—Improved Pension and Parents DIC. See paragraph 9.10b(1).

(19) Code 19—NSC-Death Payment of DIC. See paragraphs 39.16 and 56.04.1.

(20) Code 20—Special Allowance Awarded Under 38 U.S.C. 360 ~~314(c)~~—Recoupment Required. See paragraphs 29.62 and 50.83.

b. **Order of Precedence for Entry in Special Law Code Fields.** Except for the provision (subpar. a(9) above) that any other special law code will be given preference over code 09 and, conversely (par. 9.10b(1) and 29.23a), that code 14 or 18 and code 06 (in that order) will be given preference over any other special law code when an award requires entry of more than two special law codes for the same or overlapping periods of entitlement, the preferential numbered codes will be entered on the award line as the special law codes, as provided above. That is, the preference order will be 14 or 18, 06 and then in numeric sequence, except 09.

c. **Awards Involving Changes in Special Law Codes.** Entries in the field for this code on succeeding award lines will be required only if the special law code for the period covered by an award line differs from that for the immediately prior period. However, two zeros will be entered on the award line on the same or an amended award, as of the effective date at which the previously applicable special law code ceases to be for application. (See also par. 15.24b.)

15.33 INCOME DATA

a. **General.** In all cases in which income is a benefit factor; i.e., on all awards of pension to veterans, surviving spouses and children (but not awards for apportionees) and DIC to parents, the reported income will be required input data to support the specific rate(s) authorized. (See par. 9.05c re computation of income.)

b. **Income Amount.** The first award line on each award, in which income is a benefit factor (original, reopened or amended) must show in the field provided the amount of net countable annual income on which the rate authorized is based, subject to the following:

(1) The income amount entry will be dollars only. If net countable income is zero, enter zeros or leave blank.

(2) Entry of income on succeeding award lines will not be required except when the net countable income for the rate authorized for the period covered by that subsequent line would require entry of a different income amount; that is:

(a) An income amount entered on any award line, if the same, need not be repeated on any subsequent line.

(b) A subsequent line entry of an income amount will be required only if a change or, as provided in subparagraph (4) below, if the award line is one authorizing payment following a no-rate line.

(3) For an award line providing a termination, an income amount entry will be required only if the reason for termination is code 11, "Excessive Income."

(4) If the award provides for a no-rate period, followed by an award line for a period for which payment is authorized, the applicable income for that following award line authorizing resumption of payment must be entered, even though this entry would be the same as that on the line for the period immediately preceding the no-rate line (for which no entry was required).

(5) For this entry in consolidated pension awards to children, see paragraph 15.08.

15.34 WITHHOLDING AND OFFSET—RECOUPMENT DATA

a. **General.** Fields for "Type" and "Amount" are provided on screens 304, 401 and 403 under the heading "WITHHOLD" and "DED-OFFST" to authorize the withholdings required for certain purposes as explained in this paragraph. In addition, and only when there is a withholding, the field "Total Award" is provided for entry of the total amount which would be paid to the payee under that award except for the amount withheld. The amount entered under "Withholding" will provide, as a balancing figure, the difference between "Total Award" and "Monthly Rate"; that is, the amount not included for payment in "Monthly Rate" on the primary award, due to an apportionment, recoupment, etc., as indicated by the applicable "Type" code, as explained in this paragraph. (Also see par. 15.07 re entry as "Remarks" and par. 15.36 re treatment of "Prior Net Award" entries.)

(1) Withholding entries will be made on primary (veteran and surviving spouse) awards to children, parents or apportionees.

(2) Deduction-Offset entries for PFOP, 38 U.S.C. 351 offset, readjustment, and severance pay (types 3, 6, 7, 8 and 9) are computer processed to only veteran records as deductions from "Monthly Rate," but since they are considered as disbursed amounts, they may only be authorized in this manner by award actions. This computer treatment of these types of withholding as "deductions" must be recognized and understood, for the proper handling of retroactive adjustments in these cases. (See par. 15.36 re entries in prior net award data.) The master record display (M/R) will show, in "Net Award," the "Monthly Rate" and, in the fields "Recoupment Balance" or "PFOP," the amount of offset or recoupment-remaining balance, with the identifying deduction type code as stated in subparagraph b below.

(3) Entries of type and amount withheld on any award line will be considered and maintained in the master record as a continuing withholding for all subsequent award lines until "zeroed out" (subpar. d below); that is, entry of type and amount of withholding on any award line following initial entry is not required unless it is changed (or discontinued).

b. **Type Withholding/Deduction Offset Codes.** In addition to the significant numeric codes explained below, type 0 (zero) will be used to specify discontinuance of an established withholding, as provided in subparagraph d below. Code 1, 2, 4 or 5 will be entered under the WITHHOLD field and code 3, 6, 7, 8 or 9 is to be entered under the DED-OFFST field.

NOTE: On death awards, no withholding is permissible except for type 1 in surviving spouse.

(1) **Type Code 1.** This code will be used to establish a withholding for one or more of the following reasons, and when required for balancing the award for a purpose for which a specific withholding code is not provided. (See par. 15.10 re record purpose awards; see par. 29.28d(2)(a) re retired pay cases.) The particular reason(s) or purpose(s) for this use of type 1 withholding will be explained as remarks on the award document. (See also subpar. c below re balancing of award.) The entry in "Withholding Amount" will be:

(a) **Apportionment.** The total amount withheld pending determination of entitlement or recognition of fiduciary or the total amount being paid to the apportionee(s). (See pars. 26.02b and 39.10.)

NOTE: The master record will show the total of amounts actually awarded in apportionee master records, as "Apportioned Amount"; "Withholding Amount" will show the balance (if any, not yet awarded any apportionee) continuing to be withheld.

(b) **Application of VAR 1557(D).** The amount not paid to the veteran when authorizing payment under 38 U.S.C. 3203(b)(2) for institutional maintenance costs for the veteran and/or apportionment to a dependent parent (VAR's 1452(C)(2) and 1557(D)). When code 1 is used for this purpose, it will be necessary to enter special law code 12 in the veteran's award. (See par. 28.17)

(2) **Type Code 2—Philippine Combined Pesos and Dollars.** There is no "withholding." This type code is used to indicate entry of the veteran's peso entitlement in the "Withholding Amount" column, with dollar entitlement entered in "Monthly Rate," for audit/edit and statistical record purpose. It will also be necessary to use special law code 16. This code is not for current use under Target processing.

(3) **Type Code 3–Payments to PFOP Account.** In an institutional award to the chief officer of a non-VA hospital, enter the portion to be placed in a PFOP account under [38 CFR 3.852(b)] because of the veteran's hospitalization. It is carried in the M/R and shown as a type 70 deduction. (See par. 28.07.)

(4) **Type Code 4–Section 306 and Improved Pension Not Payable Due to Hospitalization.** The amount of pension in excess of $60 not payable under [38 CFR 3.551(c)] due to hospitalization.

NOTE: This is a balancing entry only and not an amount withheld subject to release. There is an absolute bar to payment of this amount. (See pars. 23.03a(1)(a), 25.11b and 25.17b (2) and (3).)

(5) **Type Code 5–Old Law (Pension-Reduction Due to Hospitalization).** The amount of Old Law pension withheld due to application of [38 CFR 3.551(b)]. The total amount thus withheld is subject to release for payment when the veteran is discharged from hospitalization. (See pars. 25.11c and 25.17b(3).)

(6) **Type Code 6–Combination.** This is for use when there are simultaneous withholdings of type 7 with type 8 or 9. It is carried in the M/R and shown as a type 96 deduction.

(7) **Type Code 7–Offset Under 38 U.S.C. 351 or [38 U.S.C. 360].** The portion (or total amount) of the total award to be deducted for offset due to a judgment, compromise or settlement under [38 CFR 3.800(a)(2)] (38 U.S.C. 351) (see [pars. 29.53, 29.56, 33.06 and 33.07) or 38 CFR 3.383 (38 U.S.C. 360) (see par. 29.62).] It is carried in the M/R and shown as a type 97 deduction [ ].

NOTE: [If offset type code 7 is used, also enter special law code 07 for 38 U.S.C. 351 cases or special law code 20 for 38 U.S.C. 360 cases.]

(8) **Type Code 8–Recoupment of Readjustment Pay.** The portion (or total amount) of the total award to be deducted for recoupment of readjustment pay under [38 CFR 3.700(a)(2)], in accordance with paragraphs 29.42 and 29.43. It is carried in the M/R and shown as a type 98 deduction.

(9) **Type Code 9–Recoupment of Severance Pay.** The portion (or total amount) of the total award to be deducted for recoupment of severance pay under [38 CFR 3.700(a)(3)], in accordance with paragraphs 29.42 and 29.43. It is carried in the M/R and shown as a type 99 deduction.

c. **Balancing of Award.** The amount(s) entered under "Withholding" must always equal the exact difference between "Total Award" and the "Monthly Rate" authorized. (See also par. 15.24d(3) above re balancing as of award line effective dates in apportioned cases.)

d. **Discontinuance of Withholding.** When an award is prepared in which a withholding is required on only one or more, but less than all, completed award lines, the first succeeding award, which is not subject to any withholding must show "0" (zero) entry under "Type," the amount withheld will be left blank.

NOTE: Withholding types 6 through 9 are AUTOMATICALLY zeroed out when the monthly amounts deducted equal the amount to be offset or recouped and it is not required that any attempt be made to predict or make any entry as to the future date when this will occur.

15.35 NUMBER OF CHILDREN–SCHOOL–HELPLESS

a. **General.** When required under the provisions of this paragraph, this field will be completed by entering the single digit (1 through 9) reflecting the actual number of children over age 18 recognized as school or helpless children to, for or on account of whom payments are being made under the specific award being prepared. Code 0 (zero) will be used when the last (or only) child in school or helpless is removed from the account. (See also par. 23.04 re disability awards.)

(1) **Apportioned Awards.** When the primary award is apportioned for a school or helpless child, only the child's apportioned award will carry the entry "1" in the applicable field.

(a) This entry on the apportionee award reflecting entitlement for a helpless child, will justify the absence of a future reduction or termination line on both the apportioned and primary awards.

(b) In a compensation award to a veteran rated 30 percent or more, this data for a school child on the apportioned award will justify the increased amount of compensation awarded the veteran and/or apportioned for the child.

(c) In all cases, awards authorizing benefits for a school child may not utilize the additional future "D" to foreshorten the award earlier than required reason 25 award line (par. 15.24).

NOTE: The use of reason codes 43 and 45 on primary awards (for program recognition that the school or helpless child is covered by a code 23, 25, 52, etc., change on another separate award) is a MUST in order to prevent erroneous computer adjustment of the school/helpless counter on the primary award.

(2) **Entry Not Required.** If there is no school or helpless child in the case, or such information would not be a factor in the specific award (e.g., disability compensation less than 30 percent not apportioned), the appropriate item for school counter will be left blank. (See also par. 38.08b re DIC awards.)

b. **School/Helpless Counter Entries–General.** Entries in these fields on the award screen to show an increase or decrease in the number of school or helpless children will only be required to record the current number of such children as of the date the award will process. (See also par. 15.18a re need for "Child Data" entries.)

(1) **Computer Automatic Updating.** Automatic adjustment in these counters will be made on the basis of the change reason codes as a part of the routine update processing of scheduled future award lines.

(a) When there is a scheduled future reduction, the computer update processing will effect the required decrease in the school counter if the future change reason code is 25 (school termination); or in the helpless counter if reason code is 54 (no longer helpless). The appropriate counter will also be decreased upon the updating of a future under one of these reason codes based on the child birth segment status shown as code 7 or 8. (See par. 15.18b(4).)

(b) The update processing of a scheduled future increase, or restoration of benefits (but NOT merely a continuation of the same rate from a child's 18th birthday), will similarly effect an automatic increase in the school counter for a reason code 23 (enters school) future which was based on prospective school attendance.

(c) When there is a scheduled future in disability compensation 30 percent or higher cases under reason code 53 (helpless child enters school), the update processing will effect the simultaneous decrease in helpless counter and increase in school counter; and the converse will be effected when the updated future is under reason code 55 (helpless child terminates schooling).

15.36 PRIOR NET AWARD DATA–SCREEN 404

Prior net award data are to be entered using the PRIOR DISABILITY/DEATH AWARD screen (404) required in accordance with the provisions of this paragraph for an award effecting a retroactive adjustment. The adjudicator should furnish these data in accordance with the provisions of this paragraph.

a. **Maximum for Routine Processing.** A maximum of 16 lines of prior award information will be accepted for entry. These data (monthly payments, effective dates and recoupments, offsets and PFOP deductions) will be retained in the master record, to a maximum of 9 prior award segments. If the 16 line maximum will be exceeded, the award will be prepared for special processing (par. 15.13).

(1) Entry of prior award data on screen 404 will be required only to the extent necessary to supply data required for computer adjustment of payments covering a period prior to the earliest period for which there is a retained master record prior award segment. Should the award provide for payment from a date earlier than the earliest prior, the system will require entry of applicable prior award data.

(2) For reopened (from terminated) awards, entry of this data will always be required (see also par. 15.27b(1)(c) re award effective date not later than the date of termination of the prior award). If a type E master record is available, the system will build the zero rate prior; otherwise, the system will require entry of the zero rate prior.

(3) Entry of prior net award data is not required for original or reopened-from-disallowed awards.

(4) Computer processing will compare the prior net award data with existing master record prior award segment. These data for periods from the effective date of the amended or reopened award which are earlier than existing master record data will be accepted for processing. For overlapping periods, however, master record data will be substituted for incoming data.

b. **Completing This Data.** When, prior award data are to be furnished for an award effective retroactively from a date prior to the earliest master record prior award segment, the following will apply.

(1) **General.** Entries on screen 404 for amended awards will cover all periods of entitlement, from the effective date on the first award line in the amended award entered through the current date. Except as provided in subparagraph (2) below, the amount (or zeros) for entry on any line on screen 404 will be the same as previously shown as the "Monthly Rate" under "Award Data" by prior award action, or by automatic adjustment for a legislative increase; that is, the gross (total) award less only amounts withheld under withholding types 1, 4 and 5.

(2) **Recoupment and Offset Entries (W/H Types 3, 7, 8 and 9)**

(a) Withholdings under types 3, 7, 8 and 9 (PFOP, 38 U.S.C. 351 offset, readjustment and severance pay) are handled in computer processing as deductions from "Monthly Rate" (par. 15.26). Accordingly, if the previous award action provided for any of these withholding types and (except for PFOP) there is an existing balance still to be recouped or offset in the master record, the type and amount withheld during the retroactive period(s) involved will be entered separately in the fields provided under WITHHOLD and DED-OFFST, in the same manner as previously entered on the earlier award(s).

(b) Once the balance for recoupment or offset is liquidated, the master record prior award data do not reflect that this was ever involved and, therefore, there will be no need to reflect such prior recoupment or offset. Prior net award data in any award prepared after the recoupment or offset balance has been liquidated, will be completed as though there had never been any, whether liquidation became final prior to or during the retroactive period involved. (See also par. 29.43d re amended award actions.)

c. **Net Award Data in Master Record Future Segments.** When this item is to be completed under the foregoing rules, award data in future segments effective as of a date in the near future should be shown, due to the possibility that this future data may have been updated and become the current data before the amended award being entered is processed. If not so updated, the prior award data for the still future segment will be ignored by the computer.

d. **Accounts in Suspense.** The period during which an award is in suspense is NOT a "no-rate" period. The rate which would have been paid, except for the suspense action, continues to be carried in the master record as a "future" award segment.

(1) Future segments (other than future termination segments) in an award in suspense are not updated. Accordingly, when prior award data are otherwise required under the foregoing rules, award data for past due future segment will not be shown. The processing of the amended award will lift any suspense and provide payment through the prior suspense period in accordance with the new award data supplied by the new award lines.

(2) If there is a future termination segment in the suspended veteran account, an amended award being prepared must be processed before the updating of the segment, as the account will have been terminated as of date of last payment (suspend date) requiring reopened award action.

(3) In apportioned disability cases only, upon termination of the veteran's award, all apportionee records in the case will also be terminated as of their individual date of last payment except when terminated by NOD transactions (pars. 17.02d and 37.01b(2)).

e. No-Rate Periods

(1) In amended awards, an entry of zeros in "Prior Net Award Data" will be used only to reflect a period of nonentitlement; that is, when the net award data in the master record are carried as six zeros; e.g., when the gross amount was reduced by a type 1 withholding to a zero net award, or when there was a period during which the award was in a terminated or no-pay status because of excess income, receipt of active duty or drill pay, etc.

(2) In reopened awards, there must always be a (final) entry of zero in "Prior Net Award Data" to reflect the date of last payment or the no-pay status as of the effective date of the reopened award.

[SUBCHAPTER IV. SPECIAL AWARD PROCEDURE

15.37] AWARD UNDER SPECIAL ACT, WRO (WASHINGTON REGIONAL OFFICE)

Awards authorized pursuant to the provisions of a private law, whether predetermining any of the conditions upon which entitlement is based or providing for payment of a fixed rate of compensation or pension to designated individuals, will be authorized under the appropriate entitlement code (see table in app. C).

a. **Remarks On Award.** The following notation will also be entered in "Remarks" to specify the particular enabling act: "Benefits authorized under special act approved ____(date)____."

b. **Entitlement Code.** Assignment of a standard benefit entitlement code is required when the private law only predetermines that the condition for entitlement to compensation or pension has been met (e.g., character of discharge, date of claim, etc.); otherwise, the applicable special act entitlement codes will be assigned, identifying that this is a special entitlement at a fixed rate.

c. **Exclusive Jurisdiction—WRO.** WRO retains exclusive jurisdiction of these cases when a "special act" entitlement code must be assigned (pars. 2.02a(9) and 2.03a(4)).

[15.38] CASES ON TEMPORARY TRANSFER

a. **In Custody of Central Office.** See paragraph 2.09e.

b. **In Custody of WRO.** Claims folders on temporary transfer to WRO for action on some phase of the case (see par. 2.10) will not be prematurely returned to the regional office of jurisdiction because of receipt of evidence or information, direct or by referral from the regional office, which requires rating, award or other authorization action. When action is so required, it will be taken in WRO unless immediate return of the claims folder is otherwise in order.

(1) Any authorization and rating action necessary will be completed, together with any correspondence indicated for the purpose of notifying the veteran and his/her representative, if any, of the action taken.

(2) The original and information copies of the correspondence and information copies of the authorization form and/or rating decision will be released.

(3) A copy of the authorization form (and rating) will be forwarded promptly to the regional office of permanent jurisdiction by dictated letter for immediate processing. [ ]

(4) The original of the award (and rating) and file copies of correspondence will be filed in the claims folder.

c. **In Custody of a Field Office.** Except when adjudication of the claim is exclusively under the jurisdiction of WRO, regional offices having temporary custody of a claims folder for a particular purpose (e.g., observation, examination, etc.) are authorized to take appropriate authorization and rating action, and to conduct any necessary correspondence when so warranted by evidence or information received. The same procedure as provided for WRO in subparagraph b above will be followed in the preparation and referral of authorization form, ratings and award notice letters.

[15.39] CASES NOT CONVERTED TO ADP SYSTEM

Cases not converted to the ADP system will be governed by the provision of this manual in all aspects, except that the procedures contained herein will be modified to coincide with previously or specially prescribed procedures to effect payments through the appropriate Treasury regional disbursing office.

[15.40] FOREIGN CASES—JURISDICTION (WRO)

When, as provided in paragraphs 2.02a(5) and 2.03a(2), WRO has jurisdiction over the claim of a claimant or payee residing outside the jurisdiction of a regional office, permanent transfer of the case to WRO pursuant thereto will not be

required unless a claim is filed by or payments are being made to such person (par. 32.14). (See also par. 26.08 re awards to foreign apportionees.)

[15.41] AWARDS TO PAYEES IN CERTAIN FOREIGN COUNTRIES (WRO)

a. Restrictions. Existing conditions require restrictions on the release of checks to persons residing in certain foreign countries (see pars. 5.13a and [15.42]). Through arrangement with the Department of Treasury and the Department of State, initial and adjustment checks exceeding a prescribed amount will not be delivered in the normal manner to these payees. The amount of the check limitation applicable to each country will be maintained in WRO by means of coordination with the Washington, D.C., Treasury Disbursing Center.

b. Preparation of Award. When the amount of an initial or adjustment check would exceed the limitation applicable to the beneficiary, two awards will be required.

(1) One award will be prepared (in duplicate) for a one-time payment of only the retroactive portion, with a closing entry of "None" effective the first of the month in which the award is approved, or last day of entitlement, if earlier.

(a) The original of the award will be processed through the WRO Finance activity for payment by the Washington, D.C., Treasury Disbursing Center, in the special manner prescribed for the country involved.

(b) The copy of the award will be temporarily filed in the claims folder, to be replaced by the processed original which will be drop-filed until the next case handling.

(2) The second award (if required) effective from the "None" date of the retroactive award will be prepared and processed in the regular manner through the Hines DPC, to effect the appropriate recurring payments.

[15.42] ACTION ON AWARDS INVOLVING PAYEES IN COUNTRIES ON THE TREASURY DEPARTMENT LIST (WRO)

a. Withholding of Payments. Public Law 828, 76th Congress, and subsequent legislation (38 U.S.C. 3108) have prohibited the release of checks to persons who resided during the period of hostilities in a territory of or under the control of an enemy of the United States. To preserve the rights of persons to whom awards had been made prior to this law and those subsequently taking residence in such countries, there was established a special account entitled "Secretary of the Treasury, Withheld Foreign Checks." Subsequently, when the continued existence of the payee could not be established, although basic entitlement to VA benefits was not terminated, awards to persons living in "listed" countries were discontinued for the reason "VA prevented from obtaining necessary evidence," thereby terminating any further accumulations in the special deposit account.

NOTE: The deposited funds "Secretary of the Treasury, Withheld Foreign Checks" balance remaining as of June 1974 were released by the Treasury Department and placed under VA control. Applicable documents are filed in the affected claims folders, identifying the amount involved for the beneficiary.

b. Discontinuance. Whenever a country is added to the Treasury Department list contained in paragraph 5.13, awards to nationals who are residing in that country will be discontinued effective date of last payment using reason code 29 (Other), "Payee residing in a listed country—VA Regulation 1653(C)," and the procedures as outlined in this subparagraph will be for application. This action is required since the release of such payments cannot be authorized for delivery in that country because of Treasury Department restrictions.

(1) Adjustments Due to Returned Checks. When checks for pension, compensation or dependency and indemnity compensation are returned by the Treasury Department to the VA for cancellation, because the beneficiaries are residing in a country which has been added to the list, a VA Form 20-6560, Notice of Benefit Payment Transaction, will be received in each case under message code 611, "ACCOUNT SUSPENDED—CHECK RETURNED—NONENTITLEMENT [ ]."

(a) If such checks are regular monthly checks and do not include adjustments for periods prior to the month for which issued, payments will be discontinued, effective as of the date of last payment.

(b) If the returned and canceled checks include adjustment payments for periods prior to the month of issuance, the awards will be adjusted (reduced) and discontinued so as to cancel the retroactive adjustment.

(2) **Other Adjustments.** When the rate payable to another person or persons is affected by termination of payments, the award(s) will be adjusted as if the person residing in the listed country did not exist, effective from the date of last payment on the terminated award. Any overpayment created by retroactive discontinuance will be subject to waiver.

(a) If the veteran, residing in other than a listed country, is receiving additional compensation or pension (or increased pension) because of a dependent who is or becomes a resident of a listed country, the reduction or termination of the veteran's award necessitated by excluding such dependent will be effective from the date of last payment.

(b) If the veteran's award is apportioned or apportionable, see paragraph 26.08b.

c. **Release of Frozen Funds.** Amounts withheld may be released and a discontinued award may be resumed, under the provisions of VAR 1653, when the country is removed from the Treasury Department list, the payee establishes residence in an unlisted country, or a reopened award is made under subparagraph e below because the payee has requested that checks be mailed to him/her in care of a U.S. Foreign Service post in an unlisted country.

(1) **Withheld Funds.** Pension and compensation payments formerly deposited in the special deposit account and currently identified as such in the claims folder may be released upon receipt of a claim and, if required, the furnishing of a loyalty clearance. [ ] Payment will be made from the Compensation and Pension appropriation, 36X0102. There is no time limit for the filing of a claim by the veteran or dependent payee. (See ch. 37, subch. II, sec. E [and subch. III, par. 37.44], re payment as accrued.)

(2) **Terminated Awards.** If an award was terminated for the reason "VA prevented from obtaining necessary evidence," or "Payee residing in a listed country," the amount otherwise payable, from the effective date of discontinuance, may be paid to the payee (VAR 1653(C)(3)).

(a) Payment is subject to proof of entitlement over the intervening period.

(b) There is no time limit for filing claim, but evidence of continued entitlement must be submitted within 1 year from the date of request.

(c) When payments were not made solely because of the continued existence of the payee was not established, VAR 1158(C) will be applied; that is, the effective date of the reopened award under that liberalizing regulation will be governed by VAR 1114(A), but not prior to December 1, 1962.

(3) **Eligibility.** Claims will be developed to determine the payee's eligibility, including proof of identity acceptable to the State Department authorities in the country removed from the list. In reopened claims, VA Form 21-508(372), will be required. The form must be executed before a diplomatic or consular officer of the United States and duly authenticated by him or her. Loyalty clearances will be obtained if required by paragraph 7.08.

(4) **Elections.** The payee will be notified of the right to elect Improved Pension in Section 306 and Old Law disability and death pension cases, and DIC, in death compensation cases.

(5) **Payee Deceased.** If there is information in file that the payee is deceased and claim for accrued benefits has not been filed within 1 year after the reported date of death, a memorandum will be addressed to the Finance activity stating that the amount withheld is not payable to any living person.

d. **Award Action.** Release of funds will require the preparation of a one-time payment award for the retroactive portion of the award prepared and processed as provided in subparagraph [15.41b(1)]. Resumption of payments from the final date through which payment was withheld will require a second award processed in the regular manner. (Also see ch. 37, subch. II, sec. E, re accrued awards on funds withheld for foreign beneficiairies.)

e. **Awards to Residents of Listed Countries.** When an original or reopened award is authorized as a result of development under paragraph 5.13c, the award will provide for mailing checks "in care of" the Foreign Service post specified by the claimant.

(1) **Notice of Awards.** The claimant will be informed of the award by dictated letter forwarded to his/her residence address.

(a) In all cases, the Department of State will be informed of the award, the post to which checks will be mailed, and the claimant's full name and residence address.

(b) If the claimant resides in one of the countries listed in paragraph 5.13a, it will also be necessary for the VA to inform him/her direct when the initial check is issued. For this purpose, a control will be established at the time the award is approved to secure this information from the Finance activity when evidence of payment is received.

(2) **Change of Address Subsequent to Award Action.** Changes of address showing current residence in countries on the Treasury Department list will be referred by the Input activity to Adjudication Division for review of the claims folder. If an award has been made under this paragraph and it is apparent that a change in delivery of checks is not intended, the change of address will be prominently noted "For Correspondence Purposes—Not for Input" and filed in the claims folder. If it is intended as a change of address for the delivery of checks, the award will be discontinued as of the date of last payment (see VAR 1653(C)).

[15.43] AWARDS PAYABLE IN PESOS (WRO AND MANILA REGIONAL OFFICE)

Jurisdiction of accounts for which pesos payment is required (par. 35.08) [is] invested in WRO and Manila regional office only (par. 2.02a(4) and 2.03a(6)).

a. **Pesos Entitlement Only.** Awards under 38 U.S.C. 107 based on service with organized military forces of the Commonwealth of the Philippines, Special Philippine Scouts (par. 35.01b(2)) or irregular forces (guerrillas) will be prepared and processed to the DPC in the regular manner except that these awards:

(1) Will be made with an extra copy which will be processed for payment by the local Treasury disbursing office.

(2) Will be payable in pesos. The dollar amount of entitlement will be entered in "Monthly Payment." No attempt will be made by Adjudication Division to compute payment in pesos.

b. **Entitlement on Peso and Dollar Basis.** When a veteran has compensable disabilities based on both Commonwealth of the Philippines, Special Philippine Scouts or guerrilla service (except as provided by VAR 1008(D)(1)), and service, in wartime or peacetime, in the Armed Forces of the United States, or Regular Philippine Scouts, entitling him/her to compensation in part on a peso basis and in part on a dollar basis, the disabilities will be combined, as usual.

(1) In computing payments due, however, the amount of the total award, in dollars, will first be determined (combined degree, plus any additional amounts authorized for loss or loss of use, aid and attendance and dependents). Then the evaluation for which dollars are payable will be computed, and the difference between this evaluation and the combined evaluation will be the basis for computing the amount due in pesos (VAR 1008(E)).

(2) The award will be assigned special law code 16.

(a) The applicable pesos entitlement code in the 90 series will be entered over the column for "Amount" of withholding, under which the amount payable for that pesos (shown in dollars) entitlement will be entered. In addition, this amount will be identified for input and computer processing as a type 2 withholding. (See also par. [15.34] re simultaneous or multiple withholdings.)

NOTE: For these awards the entry "1/2 at Pesos" is required over the withholding column.

(b) The dollar amount will be shown in the monthly rate column, and the applicable dollar entitlement code will be entered on the award line.

NOTE: If another special law code is also applicable, the provisions of paragraph [15.32b] for entry in "Misc. Code" will apply.

(c) **Peso Case Calculations.** The amount payable must be calculated two ways to determine which will pay the greater amount to the veteran. One method is to determine the rate payable in dollars for the total combined evaluation. Then, the evaluation (combined degree) for which dollars are payable will be computed. The difference between the dollar amount for the dollar evaluation and the rate for the combined evaluation will be the basis for computing the peso payment. The second method is to, also, determine the rate payable in dollars for the total combined evaluation. Then, the percentage ratio of the evaluation (combined degree) for which dollars are payable to the total combined evaluation must be computed. The total evaluation rate is multiplied by this percentage ratio to arrive at the amount payable in dollars. The difference between the total evaluation rate and the amount payable in dollars will be the basis for computing the peso payment.

Example 1. A married veteran has a 40 percent disability incurred during service in the Armed Forces of the United States and a 20 percent disability incurred during wartime service in the Commonwealth Army of the Philippines, combining to 50 percent at the rate of $257 (effective October 1, 1978).

METHOD 1

$257 (Rate of combined evaluation)
- 186 (Rate of 40 percent evaluation payable in dollars)
$ 71 (Amount for computing peso payment)

METHOD 2

$257 (Rate of combined evaluation)
× 80% (Ratio 40 percent dollar evaluation to 50 percent combined evaluation)
$205.60 (Amount payable in dollars)

$257.00 (Rate of combined evaluation)
- 205.60 (Amount payable in dollars)
$ 51.40 (Amount for computing peso payment)

Method 2 would be used in this case because the dollars payable amount ($205.60) is greater than in method 1.

Example 2. A veteran has a 10 percent disability incurred during service in the Armed Forces of the United States and a 10 percent disability incurred during wartime service in the Commonwealth Army of the Philippines, combining to 20 percent at the rate of $80 (effective October 1, 1978).

METHOD 1

$80 (Rate of combined evaluation)
- 44 (Rate of 10 percent evaluation payable in dollars)
$36 (Amount for computing peso payment)

METHOD 2

$80 (Rate of combined evaluation)
× 50% (Ratio 10 percent dollar evaluation to 20 percent combined evaluation)
$40 (Amount payable in dollars)

$80 (Rate of combined evaluation)
- 40 (Amount payable in dollars)
$40 (Amount for computing peso payment)

Method 1 would be used in this case because the dollars payable amount ($44) is greater than in method 2.

c. **Processing Pesos Awards Made in WRO.** Awards involving pesos payments made in WRO will be prepared under RO 69 with an extra copy for payment processing.

(1) If the payee resides in the area under Manila regional office jurisdiction, the copy of the award will be referred to that office for payment through the Philippine U.S. Treasury Office.

(2) In all other instances, the copy of the award will be used in the preparation of a voucher for payment by the Washington, D.C., Treasury Disbursing Center.

[ ]

CHAPTER 16. TARGET DISALLOWANCES

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CHAPTER 16. TARGET DISALLOWANCE

16.01 SCOPE

This chapter provides instructions for use of Target Screen 405, C&P Disallowance, to disallow claims for disability and death compensation and pension, emergency officers' retirement pay, and dependency and indemnity compensation. Instructions for disallowance of burial claims are in chapter 43 and instructions for disallowance of accrued benefits are in chapter 37.

16.02 DISALLOWANCE BASED ON DETERMINATION OF NONENTITLEMENT

Use screen 405 to record a determination that requirements for entitlement have not been met on a pending claim by a veteran, surviving spouse, parent or, if there is no surviving spouse, by a child.

a. **Original Claim.** Prepare screen 405 as a disallowance of an original pending claim in the following instances:

(1) Disallowance of a claim because at least one legal entitlement factor is not met. This includes disallowance because of excess income in year of initial entitlement.

(2) Withdrawal of an original claim (under code 20).

(3) Disallowance of a surviving spouse's claim if it includes a claim for children, whether or not the children are entitled. (See also par. 16.03d.)

b. **Reopened Claim.** Use screen 405 under the same criteria as for original claims.

16.03 FAILURE TO PROSECUTE CLAIM

Prepare screen 405 if a claim is disallowed because of failure to prosecute.

a. **Disallowance at Expiration of Control Period.** If evidence we have requested is not submitted within the control period (see par. 7.01), prepare a disallowance.

(1) Inform the claimant that, because we did not receive the requested evidence, we must disallow the claim.

(2) Notify the claimant of the right to furnish the requested evidence within 1 year of the date of the letter requesting such evidence in order to receive benefits from the original date of claim. Provide procedural and appellate rights.

b. **Disallowance for Failure To Report for Physical Examination.** Before disallowing a pending claim for failure to report for a physical examination, refer the claims folder to the rating board to determine whether the board can rate on the evidence of record. (See par. 24.08 re failure to report for a future examination.)

(1) If evidence is adequate for a rating decision on any of the disabilities at issue, the rating board shall rate the case and then send it to Authorization for award or disallowance action.

(2) If evidence is inadequate for a rating decision, the rating board shall annotate part I of VA Form 21-6789, Deferred or Confirmed Rating Decision, "Claimant failed to prosecute claim; evidence of record is insufficient for rating purposes." The rating board shall then return VA Form 21-6789, with the claims folder, to the Authorization activity for a disallowance.

(3) Notify the claimant of the disallowance. Inform the claimant that we will take no further action unless the claimant agrees to report for an examination. Provide procedural and appellate rights.

c. **Evidence Received Within the Statutory Period.** A disallowance for failure to prosecute a claim has no effect on the statutory time limitation for submission of evidence or the effective date of an award.

(1) If we have disallowed a claim for failure to submit evidence and a subsequent determination of nonentitlement is made based upon additional evidence furnished within the statutory period, prepare a new disallowance on screen 405.

(2) If a disability claim is subsequently denied solely on a legal ground (and in all death disallowances), prepare a new disallowance on screen 405. Show the new disallowance and reason code.

d. **Entitlement of Other Claimant Involved.** For the purposes of dependency and indemnity compensation if we disallow because we did not receive the required evidence within the control period but the statutory period for submission of evidence has not expired, determine whether there may be other claimants whose entitlement or rates may be affected. If so, set up a control to expire at the end of the statutory period. At that time determine the rights of such claimants and take appropriate action. (See also par. 16.08 re letter notice.)

16.04 DISALLOWANCE OF CERTAIN FOREIGN CLAIMS

If a claimant residing in a country listed in Treasury Department Circular No. 655 has not requested that checks be mailed in care of a U.S. Foreign Service post in an unlisted country, establish a 120-day control. Develop in accordance with 38 CFR 3.653. Note the prohibition under 38 CFR 3.653(c)(1). If no response is received within the control period, disallow the claim under paragraph 16.03a. If, on the basis of a claim filed at a later date, an award is made, retroactive benefits may be payable if evidence necessary to establish entitlement is submitted within 1 year from the date of request (38 CFR 3.653(c)).

16.05 PREPARATION OF DISALLOWANCE—SCREEN 405

a. **Reasons for Disallowance.** Enter in the correct field(s) the specific reason(s) for the disallowance. This will generate appropriate letter paragraphs.

(1) If there are two or more reasons for disallowance, entry is required for each.

(2) When code 29, "Other," is entered, write an explanation on the bottom of the generated disallowance documentation.

b. **Authorization.** Both the adjudicator and authorizer shall sign the disallowance documentation (print of screen 405). The authorizer shall then enter the authorization on the 501 screen.

16.06 PROCESSING DISALLOWANCES

a. **Need for Rating Data**

(1) **Disability Cases.** If a rating decision has been made, entry of all necessary statistical data is a prerequisite for the processing of a disallowance based on the rating decision.

(2) **Death Cases.** Rating data are NOT entered in the disallowance of any death claim.

b. **Change or Correction in Disallowance Reason.** When a disallowance has been processed, and on review or reconsideration the basis for the disallowance has changed, reprocess the disallowance. Use a dictated letter to notify the claimant and to provide procedural and appellate rights.

16.07 WHEN DISALLOWANCE SCREEN 405 WILL NOT BE PREPARED

Do not prepare screen 405 for the situations listed below:

a. If award and disallowance actions are taken at the same time, or if an award is made for one benefit pending development of entitlement to a greater or additional benefit, which is now to be disallowed.

b. If a determination is made that a beneficiary on the rolls is not entitled to a grant or continuation of an additional amount.

c. If evidence is submitted after award or disallowance of the claim and no change in the previous determination is warranted.

d. If there has been a prior disallowance of a pending claim and a subsequent claim by the same claimant is disallowed without reconsideration of new evidence for the same reason. Duplicate applications (other than VA Form 21-4182, Application for DIC or Death Pension Including Accrued Benefits and Death Compensation Where Applicable), will be marked "Duplicate Claim" and initialed by the adjudicator.

e. If a claim is not presented in the form prescribed by the Administrator. In this case, write to the claimant and explain that, to establish entitlement to VA benefits, the claimant must complete and return the appropriate VA application. Enclose the appropriate form and explain the need to return the completed form within 1 year from the date of the letter to receive benefits from the date we received the informal claim.

f. If disallowing a claim for apportionment. This does not, however, abrogate the claimant's right to notice of the action taken or the right to appeal. A notice of disagreement from a denial of apportionment between a veteran and spouse shall be treated as a contested claim under the procedures in chapter 36. (See also par. 26.05.)

16.08 DISALLOWANCE LETTER

Whenever action is taken to disallow a claim, the claimant and all interested persons will be furnished a sufficient explanation to enable the recipient to understand the reason(s) for the action taken. Provide procedural and appellate rights. In most cases, Target-generated disallowance letters meet the requirements. If circumstances require, use a dictated letter and suppress the generated letter by entry on the 501 screen in the LETTER SUPPRESSOR field. If a claim is denied due to a lack of new and material evidence, provide procedural and appellate rights with the disallowance letter.

a. **Notice of Disallowance Due to Excess Income or Net Worth.** See paragraph 9.04.

b. **Eligibility to Service Department Death Gratuity.** See paragraph 13.06e.

c. **Notices to State Public Assistance Agencies.** See paragraph 13.17.

d. **Denial of A&A and Housebound Benefits.** Claims for aid and attendance or housebound benefits are usually received from claimants who are old, severely disabled and who sincerely believe themselves entitled. They must therefore be informed of denial in a thoughtful, sympathetic manner using a dictated letter suited to the circumstances of the individual case.

(1) The letter should admit the presence of established conditions but explain that greater disability is required for entitlement to A&A or the housebound rate than for basic pension or the 100 percent evaluation.

(2) Whenever possible avoid reference to particular personal functions or specific acts of self-care which the individual is considered able to perform.

(3) In compensation cases include the explanation that only those disabilities resulting from service-connected conditions can be considered.

e. **Denial of Claims Based on Prisoner of War Status.** Use a thoughtful, sympathetic dictated letter suited to the circumstances of the individual case to inform claimants of the denial of a claim based on Prisoner of War Status.

f. **Disallowance of Election as Not in Claimant's Interest.** See paragraph 29.09b(1) for notification procedures.

16.09 NOTICE OF CONFIRMED RATING DECISIONS

To provide proper notice of a confirmed rating decision, and to permit identification of issues for purposes of notices of disagreement, specify the disability or disabilities currently at issue.

a. In most cases use the CDEV command on screen 208 to notify the claimant.

b. Do not refer to any condition not currently at issue. This avoids the possibility of unintentionally raising appellate issues, e.g., when disabilities are brought forward for rating record purposes (par. 46.04).

16.10 RELEASE OF INFORMATION—PRIVACY ACT

If release of information is denied, see MP-1, part II, chapter 21.

CHAPTER 17T. DISCONTINUANCE—SUSPENSION—RESUMPTION—CHANGE OF NAME, ADDRESS OR FIDUCIARY

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CHAPTER 17T. DISCONTINUANCE–SUSPENSION–RESUMPTION–CHANGE OF NAME, ADDRESS OR FIDUCIARY

SUBCHAPTER I. DISCONTINUANCE–SUSPENSION

NOTE: Due process requirements of predetermination notice and opportunity for personal hearing are for application under the criteria provided in paragraph 14.36.

17.01 DETERMINING APPROPRIATE ACTION

Except when termination is mandatory under applicable VA regulations, procedures and instructions, careful consideration should be given all factors in determining whether to suspend payments or terminate an award, with special awareness of the differences in their effects and in the subsequent actions required to resume or restore payments.

a. If interruption of payments is decided upon, "stop" award action should not be taken when continued entitlement is or may be established, nor when entitlement has terminated but additional evidence is required to establish the effective date of termination.

b. However, when *current* entitlement has ceased and determination as to restoration must be deferred, "stop" award action should be used.

17.02 DISCONTINUANCE OF AWARDS

a. **General**. Awards may be terminated by a stop award action, amended award, NOD transaction or, as explained in subparagraph d below, by a computer action at the updating of a future segment providing for a date of termination or as generated in IQ processing (par. 9.25g(2)(c)). Irrespective of the method employed, final authority for termination of an award is vested exclusively in the Adjudication Division.

b. **Stop Award Action**. The STOP command or VA Form 21-6745 series, Control and Adjustment Notice (par. 9.26) will be used to terminate an award only when the beneficiary's right to monthly payments has ceased; i.e., when there is a termination of entitlement. (See par. 15.29d(2) re stop actions in consolidated awards.)

NOTE: Criteria for the use of the STOP command are for equal application to the use of VA Form 21-6745 series as specially provided for income questionnaire processing (ch. 9, subch. IV) and, accordingly, references to that command will be considered as referring to VA Form 21-6745 series, to the extent specifically applicable.

(1) The effective date of termination will be determined under the applicable VA regulations, procedures or instructions.

(2) When a stop award action is taken, the effective date entered will be the first day of nonentitlement as explained in paragraph 15.16c.

(3) Date of termination may be a date past, current, or in the future except as restricted by subparagraph c(2) below as to dates too far in the past or future, and by paragraph 17.05 when the account is in suspense.

c. **Amended Award Action**. In the following instances, only an amended award will be used to terminate an award:

(1) When the action to be taken also requires other adjustment in the award.

(2) *When the effective date of termination is to be made as of a date:*

(a) Prior to the earliest effective date in the master record prior award segments; that is, when prior award data necessary for computation of the overpayment is not contained in the master record, and must be supplied as net prior award data in the amended award (par. 15.28); or

(b) Later than the future termination already established in the master record.

(c) Later than an existing master record suspense date.

(3) *Upon remarriage* of a widow/er when there are children (par. 39.01e) or marriage of a female child (par. 39.02a(3)).

d. **Effects of Termination Actions.** The processing of the foregoing termination actions or the updating of a type H future (termination) segment established by an award introduced with a termination future or computer generated as a safeguard upon detection of erroneous or inconsistent data, will cause the computer to change the type A, B, C or F master record to a type E (terminated) record which will subsequently be purged from the master file (par. 15.01b(5)). If there is an overpayment (outstanding or established by the termination action), a type D (account receivable) record will be created. (See par. 15.01b(4).)

(1) The computer will also issue VA Form 20-6560, Notice of Benefit Payment Transaction, or VA Form 20-8270, C&P Master Record–Audit Writeout, to furnish in addition to the amount of any overpayment created as a result of processing a termination action effective as of a definite date, or of proceeds payable because of any returned check(s):

(a) The accrued amount payable (or overpayment created) in case of termination effected by reason of death. (See pars. 31.01 and 37.01.)

(b) Notice furnishing necessary information to other affected VA elements or Government agencies of the termination (e.g., see par. 29.29c).

(2) In disability cases, termination of a veteran's record will also effect a simultaneous termination of all apportionee awards in that case as of their own date of last payment, except when the veteran's award is terminated by reason of death. (See also pars. 31.03 and 37.01b(2).)

(3) In death cases, although termination of a widow/er's award *does not* effect termination of apportionee awards, the computer will carry the apportionee records under an error condition, furnishing notice thereof when the required action on the apportionee records is not taken. (See par. 15.01b(6).)

17.03 SUSPENSION OF PAYMENTS

a. **General.** Although certain computer programs (e.g., returned check routines) provide for automatic suspension of payments, regional office action to suspend payment can only be effected by use of Screen 406 prepared as a suspend payment action or by use of VA Form 21-6745 series as specially provided for income questionnaire processing (par. 9.28b). The effective date of action will always be as of date of last payment.

b. **Suspend Award Action.** The SUSP command will be used to suspend payments in any case in which basic entitlement exists or may be reasonably expected to continue, or where a subsequent action toward retroactive termination or other adjustment is contemplated, but additional evidence is necessary. (See par. 15.29d(2) re suspension of payments in consolidated awards.)

NOTE: Suspend payment action recommended by the VSO in fiduciary cases will be referred to Adjudication Division by memo for adjudicative action as required.

c. **Payments Suspended by Computer Action.** In addition to suspensions specifically provided for income questionnaire processing (pars. 9.25g(1) and 9.33a), payments will be automatically suspended and notice of the suspense action will be issued for appropriate action, as follows:

(1) Upon computer processing of a returned check by imposing

(a) A regular suspense, because of possible nonentitlement; or

(b) An undeliverable check suspense, because a second check was returned. These VA Forms 20-6560 will be reviewed by the Correspondence activity by master record inquiry (MINQ) to determine whether the claim is now in running award status or has been terminated. If not, VA Form 20-6560 will be referred with the claims folder to an adjudicator for review and adjudicative action, such as processing to impose a regular suspense, if necessary, to insure against unwarranted resumption of payments by the subsequent processing of a change of address (par. 17.13). (See also par. 24.09 re need for adjustment to continue insurance deductions, including VMLI (Veterans Mortgage Life Insurance) premiums.

(2) When, in conjunction with computer updating routines for accounts carrying the additional futures code D, an additional future cannot be generated. (See par. [15.24e].)

d. **Effect.** The processing of suspend payment transactions, whether [entered] or computer generated will result in the following:

(1) Further payments in the account will be withheld, but the master record will be left intact. (But see par. 17.07 re automatic award reduction to the amount of a VA insurance deduction when payments are suspended under code "31," pending appointment of a fiduciary, and par. 39.01b(3) re automatic termination of accounts suspended under code "15," alleged remarriage of surviving spouse.)

(2) VA Form 20-6560(Msg 615) will also be furnished as a followup notice when the account has been in suspense status for 6 months, and at the expiration of each subsequent 6-month period until payments are resumed or the award terminated. This will not relieve the Adjudication Division of the responsibility for maintaining necessary control on such cases to insure proper development and timely action for resumption or termination. (See also subpar. e below.)

(3) In apportioned cases, suspend payment transactions are processed against the specific primary or apportionee record to which directed, independently of each other. Accordingly, suspend action for *each* payee record to be suspended is required EXCEPT in apportioned disability cases:

(a) When the suspense reason indicates probable termination of the veteran's award will be in order; that is, when reason codes 01 through 12, and 16 through 22 are used indicating possible nonentitlement, the processing of the veteran-suspense will also suspend the apportionee accounts.

(b) When suspense is computer generated, as specifically programed for income questionnaire processing (par. 9.33b) and when required additional futures are not timely furnished ([par. 15.24e]).

e. **Control.** Accounts in suspense will be maintained as a pending issue under control to insure final and timely action toward resumption (at the same or different rate) or termination of payments.

(1) Controls in connection with a pending issue may be established by VA Form 21-6880, Future Control Code Sheet, or VA Form 21-693, Diary Slip, if not includable on VA Form 21-8060, Control Code Sheet, in accordance with existing instructions.

(2) Complete reliance on a computer-generated followup will not be considered an adequate control except as specially provided for income questionnaire processing and suspension of surviving spouse accounts due to remarriage when children are not involved (par. 39.01b.)

17.04 PROCESSING OF STOP, SUSPEND AND RESUME ACTIONS

a. **General.** Screen 406 is a workscreen on which necessary data are entered and when generated after entry, serves as the claims file documentation of the action. Information copies of the generated screen will be submitted, as required, to the Veterans Services Officer or the appropriate VA regional office and insurance center (subpar. [i] below).

NOTE: If stop, suspend, or resume processing is affected because DPC Hines becomes unavailable, processing must be canceled and attempted at a later time when Hines is available for inquiry. [(To terminate processing on either the 103 or the 406 screen, enter "END" in the NEXT SCREEN field.)]

b. **Requirement of a Pending Issue and Regional Office Jurisdiction.** A stop, suspend or resume pay transaction may be processed only for those cases in which a pending issue exists *and* when [either] the [Hines or BIRLS] master record shows station jurisdiction at the regional office taking the action. In all instances, enter the command STOP, SUSP OR RESU (as appropriate), [password,] file number, [payee number, end product code, benefit, and payee stub name.]

(1) If a pending issue exists and:

(a) Disposition of the issue has been made to "adjudicator" through the S99 screen, the 406 screen will be presented for processing.

(b) If claim location is other than "adjudicator," the DISP command must be used to update the S99 screen before processing may continue.

(2) If no pending issue exists [the Pending Issue Control-Screen 103 will be displayed for entry of the date of claim and section/unit number.]

c. **As a Stop Action.** Enter reason code (from app. C) and effective date or "DLP" as required (par. 17.02b).

d. **As a Suspend Action.** Enter reason code (from app. C). If development is required, the appropriate 200 series screen should be entered in the [406] screen NEXT SCREEN field.

e. **As a Resume Pay.** To resume an account in regular suspense, the 406 screen will be called up for review. If the data displayed are in order, the screen will be entered. No data entry will be required in the resume mode unless it is determined that the account address must be changed.

(1) If a change of address is also required, a "Y" will be entered in the CHANGE OF ADDRESS field prior to entering the RESU screen.

(2) Upon entry when a change of address is a factor, the change of address screen will be processed as provided in paragraph 17.17. The change of address screen will be generated as documentation of both actions.

f. **Master Record Status Messages.** A maximum of three of the following legends describing significant master record status will be displayed, if relevant, on the 406 screen for information purposes and for action when required:

(1) Terminated XX-XX-XX-REASON XX; or

(2) Suspended XX-XX-XX-REASON XX; with optional

(a) Apportioned; and/or

(b) Dependent children; or

(c) Two-parent case.

(3) Dependent children; and/or

(4) Apportioned; or

(5) Two-parent case.

g. **Authorization.** [Authorize] all stop, suspend, and resume actions [using] the 501 screen-CAUT command.

NOTE: Target Generated Letters will not be provided.

h. **Disposition of Copies.** [Sign and file] the generated documentation [ ] in the award section of the claims folder or [refer it] for drop filing, if the action was taken without the folder. [Release] any required information copies [ ] upon authorization of the transaction.

i. **Copies for Insurance.** When action is taken to terminate an award because of death of the payee and VA Form [29]-5851, Insurance Award Statement, (or other form(s)) in file shows the beneficiary was also receiving installments of insurance death benefits, [refer by OF 41, Routing and Transmittal Slip] a copy of the generated documentation , annotated to show all insurance numbers of record, [ ] to the insurance office of jurisdiction (Philadelphia or St. Paul).

j. **Procedures for Check Intercept**

(1) All personnel preparing stop or suspend payments shall determine, on the basis of the Hines DPC Compensation and Pension schedule of operations, whether input can be accomplished to prevent release of the payment. If it cannot, Adjudication personnel [shall] initiate action to notify the postmaster or financial organization for cases under Direct Deposit by mailgram to intercept the payment when the action can be taken prior to the delivery of the payment. They [shall] also notify the postmaster or financial institution by telephone when mailgrams cannot be expected to be received in time to prevent release of a benefit payment that is equal to or greater than an award of 100 percent disability compensation to a single veteran. Use of the check intercept procedure is not appropriate [if] an award has been adjusted and there is continued entitlement to benefits.

(2) [Prepare] VA Form 20-8854, Mailgram—Intercept and Recall of a Benefit Check (fig. 17.01), in duplicate and address [it] to the postmaster at the city and State shown for the payee, using the postmaster's ZIP Code if different from that of the payee.

[(3) In a Direct Deposit/Electronic Fund Transfer case, prepare VA Form 20-8854a, Mailgram—Intercept and Recall of a Direct Deposit Payment, in duplicate in the required format (fig. 17.02). Enter all information necessary to complete the form using data on the Target CADD-601 screen and on the SF 1199A, Direct Deposit Sign-Up Form, in the claims folder. Verify the financial institution involved by matching the routing numbers on the SF 1199A and on the 601 screen. If the numbers are different or there is some other question, contact Finance for clarification by review of the payment information on microfilm.

(4) Hand-carry the original VA Form 20-8854 or VA Form 20-8854a to the Data Terminal Unit for immediate transmission. For control purposes, the unit chief shall maintain the copy in a pending file until a copy of the transmission is returned. When the control is cleared, drop file the original mailgram request in the claims folder and maintain the suspense copy with the VADATS transmission copy attached in the division for systematic review. Disposition of these systematic review records will be in accordance with RCS VB-1, part I, item 13-098.000 (this item number will be included in a future revision to the records control schedule).]

17.05 DISCONTINUANCE FOLLOWING SUSPENSION OF PAYMENTS

When payments have been suspended, a stop award transaction may be used to terminate the award as of the date of last payment (the effective date of the suspense) or as of a date earlier than the date of last payment.

17.06 CORRECTING STOP AWARD ACTIONS

a. Effective Date. A corrected (subsequent) stop transaction cannot be used to change the effective date of termination, since the first notice will have caused the elimination of the necessary award data from the master record (see par. 17.02d). When a correction or adjustment is required, [prepare] a *reopened award:*

(1) To correct the date of termination to a date *prior* to the date of last payment as effected by the stop action, [on] the reopened award show only one award line entry of "None" effective as of the correct date, unless an adjustment in earlier payments is also required.

(2) To correct the date of termination to a date *subsequent* to the date of last payment effected, [make] the reopened award [ ] effective as of such date of last payment (unless prior adjustment is required) and show the additional period(s) of entitlement ending with the "None" award line entry effective as of the correct date.

NOTE: See paragraph 15.36e(2) re entry of required prior award data.

b. Termination Reason Code. [If] it is discovered that an erroneous termination code was entered on a stop award action (or in [an] award now terminated), [correct] the file copy by lining out the incorrect code and inserting and initialing the correct code.

17.07 SUSPENDING VETERAN'S AWARD PENDING RECOGNITION OF FIDUCIARY

a. Procedure. [If] suspension of payments to an incompetent veteran pending appointment or change of fiduciary is in order (par. 12.05a), [use] reason code "31" and [annotate] the following as Remarks on the generated 406 screen: "Veteran incompetent—appointment of fiduciary pending."

b. Effect When Insurance Deduction Is Involved

(1) Insurance Deduction Only. If there is an authorized deduction for insurance purposes and there are no other deductions on the master record except for [a] loan guaranty or income tax lien, the award will be automatically continued in an amount equal to the insurance deduction only; deductions for [a] loan guaranty or income tax lien will be discontinued. A computer notice will be issued notifying the field station of the action taken.

(2) Other Type Deduction(s). If there is any other type of deduction, [take] action to suspend all payments. VA Form 20-6560 (Msg 635) will be issued to notify the appropriate VA regional office and insurance center of the termination of the premium deduction and need for direct remittance.

c. Resumption. [If] payments are to be resumed in an account continued at the amount of the insurance deduction under code "31," [prepare] an amended award.

(1) [Do not enter prior] net award data [ ] unless the [amended award] effects an adjustment prior to the suspend DLP. (See par. 17.14b.)

(2) However, [if] a suspense, coded "31," is routinely processed to suspend all payments (e.g., [if] there is any other type of deduction), the RESU command may be used to resume payments.

17.08 SPECIAL PROCEDURES FOR ALLEGED REMARRIAGE OF SURVIVING SPOUSE

(See par. 39.01.)

17.09 ACTIONS IN CONSOLIDATED AWARDS FOR CHILDREN

See paragraph 15.29e(2).

17.10 ACTION UPON DEATH OF BENEFICIARY

a. **Death of Veteran.** See paragraph 31.01.

b. **Death of Apportionee in Disability Cases.** See paragraph 26.16.

c. **Death of Dependent of a Deceased Veteran.** See paragraphs 37.01c and 39.05.

SUBCHAPTER II. RESUMPTION AND RECOMMENCEMENT OF PAYMENTS

17.11 GENERAL

a. When an award has been *terminated,* payments can be resumed only by use of a reopened award (see par. 17.06a(2)).

b. When payments have been *suspended,* resumption of payments may be effected by use of the RESU command, or amended award or, when under a nondeliverable check suspense, by change of address transaction, as explained in paragraph 17.13.(See pars. 9.32d(1) and e, and 9.35, for special procedures provided for income questionnaire processing.)

17.12 RESUMPTION OF PAYMENTS

a. **General.** The Resume Screen may be used to resume payments in a suspended account provided that no change is to be made in the award other than as to the address and an amended award is not specifically required under paragraph 17.14.

(1) Payments will be resumed only from date of last payment.

(2) Proceeds due by reason of returned and canceled checks will also be released to the payee automatically. If the date of last payment is prior to the first of the processing cycle month, proceeds due will be included in the retroactive check; otherwise, they will be paid by a separate check.

(3) Separate processing under the RESU command is required for *each* payee's suspended account which is to be resumed (except as specifically provided for resumption of apportioned disability awards in income questionnaire processing (see par. 9.35a(1)(a)).

b. **By Adjudication Division.** Resume payment actions may be taken only by Adjudication Division, in accordance with the foregoing, regardless of the reason for suspense or how it was effected.

c. **Resumption Based on VSO Recommendation or Certification of Fiduciary**. When the VSO determines the advisability of resuming payments to the payee, in a case suspended as his/her request, a memo to that effect will be prepared and dispatched to Adjudication Division for action. If resumption is based on appointment of or change in fiduciary relationship, VA Form 27-555, Certificate of Legal Capacity to Receive and Disburse Benefits, will be required prior to the resumption of benefit payments to or on behalf of a minor or incompetent adult beneficiary.

17.13 RESUMPTION FROM COMPUTER-GENERATED SUSPENSE

Payments suspended by the computer processing of a check returned because of possible nonentitlement (regular suspense) will be resumed only by a resume payment transaction or amended award. However, payments suspended by computer processing of the second check returned (as undeliverable check suspense) may also be automatically resumed upon the processing of a Change of Address (Screen 601). See also paragraph 17.03c.

17.14 AMENDED AWARD REQUIRED

An amended award will be required (see par. 15.06c) to resume payments which have been suspended (but see par. 9.34 re deferral of action otherwise in order when in IQ suspense):

a. When any change is to be made in the award other than as to payee's address.

b. When payments to or for a veteran were suspended pending the recognition or change of fiduciary and payments were continued in the amount of an insurance deduction (par. 17.07).

c. When resumption is to be made effective as of a *date subsequent to the date of last payment.* The amended award will be required to show as the first award line entry, a "None" rate effective as of the date of last payment. (See par. 15.16b(2)(c).)

d. When payments under a consolidated award have been suspended and payments for less than all the children under the award are to be resumed. (See also par. 15.29e(2).)

SUBCHAPTER III. CHANGE OF NAME, ADDRESS OR FIDUCIARY

17.15 GENERAL

a. **Use of Screen 501 (Change of Name, Address and Fiduciary).** This screen is designed for the introduction of a transaction which, as determined by the command entered on the READY Screen, will:

(1) Under CNAM—change the master record (stub) name in the field "Person Entitled" and, if necessary, simultaneously change the name and address segment (par. 17.16).

(2) Under CADD—change only the address in the name and address segment when there is no VSO location code in the master record (par. 17.17).

(3) Under CFID—change the name of a fiduciary-payee, and address, when there is VSO location code in the master record (par. 17.18).

b. **Processing.** If more than one record exists at Hines or in the PIF (pending issue file) for any VA file number, a Payee Selection Screen will be presented if only the processing command and file number are entered on the READY Screen. A positive entry must be placed beside each line specific to each record to be changed. The Selection Screen entries generate transaction modifiers which will determine the processing of those common input transactions (see MP-6, pt. IV, supp. No. 1.4, par. 301.15) against either or both the C&P and/or Education master files.

CAUTION: It is important that the preparer be aware of how a change of address transaction (CADD) effecting a change in the payee address segment will appear on the monthly *benefit check*. If processed into or before the updating cycle for that accont (as shown in the Hines DPC monthly processing schedules), the check for that month will be printed with the payee's name and new address; if processed after the updating cycle, it will produce only a gummed label with the payee's name and new address which is used by the Treasury Disbursing Center to overlay the check envelope for mailing purposes. However, for a CFID (change of fiduciary) or a CNAM (change of name) person entitled whether processed before or after the update cycle, the computer processing will produce a new check for that month.

17.16 CHANGE OF NAME OR PERSON ENTITLED—CNAM

a. **General.** Processing of a CNAM (change of name) transaction will be used to effect a change in the master record (stub) name of the beneficiary (person entitled) and in the payee name and address segment. When the only action required is to correct the spelling of the master record stub name of the person entitled, a change will be made by correction, (CORR command), not by change of name (CNAM) action. If the incorrect spelling is also in the beneficiary's full name as displayed in the payee name and address segment, a (CNAM) *must* be processed to effect a simultaneous *correction* in the "Person Entitled" *and* payee name and address.

b. **Authority.** A request for or notice of change in "Name of Person Entitled" will be referred with the claims folder to the Adjudication Division for approval. The change will be approved by an authorizer or duly authorized adjudicator (par. 15.03), when there is no question as to the identity of the entitled person, and when:

(1) It is determined, in cases involving marriage or divorce of a [ ] beneficiary, that appropriate evidence is present.

(2) Evidence is furnished that the name under which the veteran served is not his/her name.

(3) A change of name has been authorized by a court decree.

(4) A written request is furnished by a beneficiary specifically requesting a change of name, where a court order is not required by the State of residence.

(5) Minor change or correction in the spelling of the beneficiary's name is required (subpar. a above).

c. **Procedure.** Correspondence or documents requesting or indicating the need for a change of name of the beneficiary received in the Mail activity, will be referred to the Adjudication Division.

(1) The Correspondence activity will refer the material received and the claims folder to an adjudicator for review and approval.

(2) Upon approval, the CNAM command will be used to effect the change of name.

(3) Award action attendant to the name change will also be taken.

NOTE: Upon approval of a change of name of person entitled, Correspondence activity will take the necessary actions required to reflect this change in BIRLS (Beneficiary Identification and Records Locator Subsystem) and the claims folder identification.

17.17 CHANGE OF ADDRESS OF PAYEE—CADD

a. **General.** Processing of a change of "Payee Address" (CADD) is only for the limited and specific purpose of effecting a change in the address of the payee *except* when the beneficiary is incompetent or the award is to a parent custodian under VAR 1850(C) (see par. 17.18). Change of address also may be effected by incorporating the change in a resume payment action (par. 17.13) or an amended award when information is received with other evidence requiring a change in award data.

b. **Authority.** A change of address will generally be processed without need for approval by an adjudicator. Any request signed by the beneficiary/payee, or by the VA employee who accepts a telephone request from or on behalf of such person, will be authority to process a change of address transaction.

c. **Procedure.** Requests for change of address when initially identified as from a veteran (payee 00) or a [surviving spouse] (payee 10) will be processed in Administrative activity. In addition, when any request is not identified by file number, Administrative activity will obtain the number by BINQ (BIRLS inquiry). Requests relating to other payees (or incompetent veterans or [surviving spouses]) will be referred to the Adjudication Division Correspondence activity, except as provided below regarding receipt of [ ] changes of address by Veterans Services Division.

(1) When the change of address transaction is processed, the source document will be appropriately annotated. [If it contains additional data of record value, it will be filed in the claims folder. Otherwise, it will be forwarded to the Administrative activity holding file.]

NOTE 1. Nursing Home Address

(a) A requested address change from a veteran, [surviving spouse] or parent showing the new address to be to or in care of a nursing home will be referred to Adjudication for review. Although this may not be considered as constituting an informal claim for aid and attendance (since the simple request for address change does not specify the benefit sought), if A&A is not being paid, development for possible entitlement should be undertaken by appropriate notification to the payee or fiduciary of the right to apply therefor. Should development lead to a finding of A&A entitlement, benefits will be awarded from the date of receipt of the application for the increased benefits unless the provisions of VAR 1114(A) are for application.

(b) Address changes form veterans, [surviving spouses], or parents indicating removal from a nursing home will be referred to Adjudication for review under paragraph 24.15d.

NOTE 2. Penal Institution Address. Referrals showing an address change to or in care of a penal institution will also be made to Adjudication (after processing of the change of address transaction), for action as may be required under paragraph 24.07.

(2) When correspondence containing a request for change of address is first received in the Adjudication Division, the address change will be processed in the Adjudication Division regardless of payee.

(3) If the station of jurisdiction differs from the station which received the action document, the receiving station will process a change of address (if appropriate) annotate and stamp the source document to reflect the input, and route the action document [ ] to the office of jurisdiction.

(4) Changes of address received by the Veterans Services Division will be processed by designated employees of that division.

[ ]

17.18 CHANGE OF FIDUCIARY OF IDENTITY OF PAYEE—CFID

a. **General.** A "Change of Fiduciary" may be processed under the CFID command for the limited and specific purpose of effecting a change in the name (including identity) of a fiduciary payee, and/or the fiduciary's address. the CFID command will also be used to effect a change in competency pay status and to establish, change or terminate VSO controls. Circumstances for use include:

(1) Change of fiduciary payee, upon discharge or dismissal of the fiduciary and appointment or recognition of a new fiduciary.

(2) Change of name of the existing fiduciary or institutional payee.

(3) Change of Director-payee upon notice that the institutionalized veteran has been transferred to another institution.

(4) Change from fiduciary as payee, to authorize direct payment to the beneficiary, upon the discharge of a fiduciary or because of notice that an institutionalized veteran has been released and restored to competency status, or receipt of authorization for supervised direct payment.

(5) Change of address of a previously recognized fiduciary.

(6) To add or remove a payee on a consolidated payment roll; such as when a veteran (other than a veteran receiving disability compensation based on wartime service) enters or leaves the U.S. Soldiers' and Airmens' Home (par. 24.12).

(7) In addition to entries which may be required for processing of the CADD and CNAM commands, the following fields will be completed as appropriate for change of fiduciary (CFID):

(a) **FIDUCIARY FILE LOCATION.** Enter the number of the regional office having jurisdiction over the guardianship file, (or 099 in VAR 1850(C) cases.) If the entry is no longer applicable, the existing number should be zeroed out.

(b) [FIDUCIARY ADDRESS. Enter the fiduciary address, if applicable. The following legends apply:

(1) The appropriate legend, when required, should be entered on one line. It should not be entered on the same line with the name of the payee.

(2) In fiduciary cases, when the VSO's certification is as "Guardian of the Estate," the words "of the Estate" will be omitted. The work "legal" will not precede the word "guardian." Similarly, a custodian (recognized by the VSO or by Adjudication Division under VAR 1850(C)) will be entitled as "custodian of," without the word "legal."

(3) Whenever possible, the title of the office held by a fiduciary should be used without specifying the name of the present incumbent; e.g., the superintendent of an institution.

(4) The name of the payee will be followed by a legend in only the instances specified, and as illustrated, below:

Award to spouse under VAR 1850(A)(2)	Mary Doe Wife of J.C. DOE - OR - John Doe Husband of M.A. Doe
Minor or incompetent child, or incompetent veteran, spouse, surviving spouse or parent Consolidated award to two or more children.	Thomas Jones (guardian, custodian, etc., of) Jane Doe Thomas Jones, (guardian, custodian, etc.) of children of J.C. Doe
Joint Guardianship. (Use address as shown by VSO.)	Thomas Jones Gen Gdn (j/w) Gdn Clerk Surrogate's Court, etc.
Indian-Ward of Government. (See par. 12.14.)	Bureau of Indian Affairs (name of Indian agency or station) for John Doe.

(5) The following standard abbreviations may be entered for legends on processing screens. These abbreviations may also be used for letters and checks.

Legend	Standard Abbreviation
Guardian of	Gdn of
Guardian of Estate of	Gdn of
General Guardian jointly with	Gen Gdn j/w
Custodian of	Cust of
Custodian of the children of	Cust/Children of
Committee of	Cttee of
Custodian Jointly With	Cust/Jtly with
Conservator of the Estate of	Conserv/Est of
Executor/Executrix of the Estate of	Executor/Est of - or Executrix/Est of
Administrator/Administratrix of the Estate of	Admtr/Est of

(c) **SPOUSE PAYEE.** Entry is required if the veteran's award is to be paid to the veteran's spouse under VAR 1850.

(d) **CONSOLIDATED PAY NO.** Enter the consolidated payment number of the medical center in which the veteran is hospitalized when payment is being made to the Director (MP-6, pt. IV, supp. No. 1.1, par. 501.05b), or the consolidated payment number of a corporate fiduciary for which a consolidated payment number has been assigned (MP-6, pt. IV, supp. No. 1.1, par. 501.05c).

(e) **COMPETENT PAY DIRECT, CODE 1.** Entry is required when the veteran is rated and is found to be competent.

(f) **INCOMPETENT PAY FIDUCIARY, CODE 2.** Entry is required when the veteran is rated incompetent by the rating board and the VSO has certified that payment will be made to a fiduciary.

(g) **INCOMPETENT BY COURT—PAY FIDUCIARY, CODE 3.** Entry is required when, although rated competent, there has been a finding of incompetency by a court of jurisdiction and payment to a fiduciary has been certified by the VSO.

(h) **LEGAL DISABILITY—PAY FIDUCIARY, CODE 4.** Entry is required when payment is to be made to a fiduciary in compliance with the VSO's certification, and the veteran has not been rated incompetent but is under legal disability by reason of court action.

(i) **INCOMPETENT—PAY DIRECT, CODE 5.** Entry is required when the VSO certifies direct payment to a veteran rated incompetent.]

b. **Authority.** Except for those cases in which VSO certification of a fiduciary is not required (par. 12.01a), the change will be initiated on VA Form 27-555 and referred to the Adjudication Division for approval and entry by an authorizer.

c. **Procedure.** Upon approval in the Adjudication Division, the change of fiduciary will be processed. The evidence upon which the action was predicated will be annotated to show the date of processing and the initials of the responsible employee.

NOTE: Whenever a DD/EFT (Direct Deposit/Electronic Funds Transfer) payment is in effect for an incompetent beneficiary and a change of fiduciary is made, the DD/EFT must be canceled to ensure that no further funds are released to the former fiduciary.

Veterans Administration

MAILGRAM — INTERCEPT AND RECALL OF A BENEFIT CHECK

1. TO: DATA TRANSMISSION UNIT - TRANSMIT ALL DATA BETWEEN HEAVY BLACK LINES

POSTMASTER

Readfield Maine 04355
(City, State & ZIP Code)

PLEASE RETURN TO THE TREASURY DEPARTMENT DIVISION OF DISBURSEMENT,

P.O. Box 2940 Austin Texas 78769 ,UNDER OFFICIAL COVER THE
(Street, City, State & ZIP Code)

FOLLOWING DESCRIBED TREASURY CHECK:

PAYEE Raymond G. Poulin VA FILE NO 12 345 678
(First name, Initial, Last name)

ADDRESS 7 Shore Acres Road Readfield Maine 04355
(Street, City, State & ZIP Code)

ENVELOPE MARKING "V" NEAR LEFT BORDER ON FRONT.

DO NOT RETURN ANY CHECK FOR ABOVE PAYEE THAT

A. IS RECEIVED AFTER 15 WORKDAYS OF THIS REQUEST,
B. DOES NOT HAVE A PREPRINTED "V" ON THE FRONT OF ENVELOPE,
C. HAS A RETURN TREASURY ADDRESS OTHER THAN THAT SHOWN ABOVE.

DIRECTOR
VA REGIONAL OFFICE

(Address)

(City, State & ZIP Code)

3. AUTHORIZING OFFICIAL	4. DATE AUTHORIZED	5. ADJUDICATION UNIT
Merton R. Bates	8-1-86	211A
6. DATA TERMINAL OPERATOR		7. TRANSMISSION DATE

VA FORM JAN 1984 20-8854 SUPERSEDES VA FORM 20-8854, MAY 1982, WHICH WILL NOT BE USED.

Figure [17.01.] VA Form 20-8854, Mailgram—Intercept and Recall of a Benefit Check

Veterans Administration

MAILGRAM - INTERCEPT AND RECALL OF A DIRECT DEPOSIT PAYMENT

1. TO DATA TRANSMISSION UNIT - TRANSMIT ALL DATA BETWEEN THE HEAVY BLACK LINES

Brookeville Savings and Loan
32654 Queen Elizabeth Drive
Brookeville Maryland 20833
(Name & Address of Financial Institution)

PLEASE RETURN THE FOLLOWING U.S. TREASURY DIRECT DEPOSIT PAYMENT

CO NAME U.S. TREASURY 220

CO ID 3111036002

CO DATE _____ (PAYMENT DATE)

INDIVIDUAL ID _____ (ACCOUNT NO.)

INDIVIDUAL NAME Olive Branch

VA FILE NO 87 654 321

AMOUNT $388.00

RETURN REASON Widow Remarried

THE RETURN OF THIS PAYMENT SHOULD BE MADE IN ACCORDANCE WITH INSTRUCTIONS CONTAINED IN THE U.S. TREASURY "GREEN BOOK"

DIRECTOR
VA REGIONAL OFFICE

_____ (STREET ADDRESS)

_____ (CITY, STATE & ZIP CODE)

2. AUTHORIZING OFFICIAL	3. DATE AUTHORIZED	4. ADJUDICATION UNIT
F. Stephen Ward	7-31-86	212B
5. DATA TERMINAL OPERATOR		6. TRANSMISSION DATE

VA FORM JAN 1983 **20-8854a**

EXISTING STOCKS OF VA FORM 20-8854a, NOV 1979, WILL BE USED.

Figure [17.02.] VA Form 20-8854a, Mailgram—Intercept and Recall of a Direct Deposit Payment

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CHAPTER 18. APPEALS

18.01 GENERAL

The jurisdiction of the BVA (Board of Veterans Appeals) is defined in VAR's 9801, 9802 and 9803. The appeals manual, M1-1, further covers the subject. As a general rule, all decisions [made] on claims involving benefits administered by the VA are subject to review by the Board of Veterans Appeals.

a. An appellate review is initiated by receipt of a notice of disagreement, in writing, filed with the activity which made the determination with which disagreement is expressed (agency of original jurisdiction), followed by receipt of a substantive appeal after a copy of the statement of the case (see par. 18.07) has been furnished the claimant. For the purpose of this chapter, "agency of original jurisdiction" is a generic term applying to all activities having original jurisdiction to make decisions on claims for the benefit in issue. The activity in the office having current custody and jurisdiction of the applicant's claims folder will be considered the activity which entered the determination with which disagreement is expressed. (See par. 18.07b re division of responsibility.)

b. Upon receipt of a claimant's written notice of disagreement, the agency of original jurisdiction will review the claim and take any development or other adjudicative action as the facts warrant. (See par. 18.05.)

c. If, after review and development, the disagreement has not been resolved through the granting of the benefits sought or withdrawal of the notice of disagreement, a statement of the case will be prepared and furnished to the claimant and his/her representative.

d. The agency of original jurisdiction may close the case for failure on the part of the claimant to respond timely after receipt of the statement of the case. However, if there is a question as to whether a notice of disagreement or substantive appeal was in fact adequate or was timely filed, or if protest is received from a determination that an appeal was not so filed, the appeal will be certified to the BVA where jurisdiction will be finally determined (par. 18.04b).

e. As there is authority under VAR 1105(A) for an agency of original jurisdiction to correct a clear and unmistakable error of fact or law, appellate review will proceed if an appeal is presented from a finding of an originating agency that there was no error in a prior determination.

18.02 NOTICE OF RIGHT TO APPEAL

a. **Notice of Procedural and Appeal Rights.** Except as provided in subparagraph b below, and in cases of contested claims (see par. 36.08), letters initially informing claimants of ratings or other adjudicative determinations subject to appellate review will include a Notice of Procedural and Appellate Rights, as provided on the current edition of VA Form 1-4107.

b. **Omission of Appeal Notice.** When a claim for death pension, compensation or DIC involving the question of service in WW II in the Philippines has been disallowed for the reason that the service department has reported that the deceased had no recognized guerrilla service or any service which could be considered as "service" in the Armed Forces of the United States, the appeal paragraph will be omitted. However, in any case in which a written notice of disagreement is received from a claimant whether or not notice of procedural and appellate rights was furnished, the procedure set forth below will be followed.

18.03 NOTICE OF DISAGREEMENT

a. **General.** A written statement by a claimant or representative expressing disagreement with a factual or legal conclusion of an agency of original jurisdiction will be accepted as a notice of disagreement. Such a statement will, in most instances, state or imply a belief that a claim for benefits was improperly disallowed in part or in full by reason of erroneous finding of fact or conclusion of law. The statement need *not* contain specific allegations of error of fact or law nor is it material that the claimant's contentions may appear to have no merit.

(1) It is important to note that a complaint letter should not automatically be considered a notice of disagreement. A mere inquiry or general complaint, in most cases, can be disposed of by a letter of explanation. Such a letter should conclude with advice that the time provided for filing a notice of disagreement is not extended.

(2) However, should a claimant indicate a desire for appellate review he/she must be furnished a copy of the statement of the case.

(3) When a statement is determined to be a notice of disagreement, the case should be referred to the correspondence clerk to establish a control (par. 18.06).

b. **Multiple Issues.** When a notice of disagreement is received following a multiple-issue decision and it is not clear which issue or issues the claimant desires to appeal, clarification sufficient to identify the issue being appealed should be requested from the one filing the notice of disagreement. Reasons why claimants disagree with a decision should not be requested. When a notice of disagreement is received following a decision involving only one issue, further correspondence to identify the issue is unnecessary and a statement of the case should be prepared if other development or action is not warranted.

c. **Eligibility for Outpatient Treatment, Hospitalization, Etc.** Notices of disagreement with denials of eligibility for outpatient treatment, hospitalization, etc., based *solely* on rating or authorization determinations will be processed by the Adjudication Division of the office having current jurisdiction. (See also par. 30.02.)

18.04 TIME LIMITS ON SUBMISSION OF NOTICE OF DISAGREEMENT

a. Notices of disagreement must be filed within 1 year from the date of the letter of notification of the result of initial review or determination, except in contested claims for which the time allowed for initiating an appeal is 60 days from the date of mailing notice of the original action to the claimant to whom the action is adverse [redacted] (See par. 36.08.) Ch 321

(1) A notice of disagreement from an adverse determination made in connection with eligibility for a claim for payment of the Armed Forces death gratuity, as provided under 38 U.S.C. 423, will be considered as having been timely filed if it is mailed to either the service department or the VA within 1 year from the mailing date of the notice by the VA of the determination. (See par. 13.06 e and f.)

(2) In determining receipt within the 1-year period, the standard applied requires exclusion of the first day and inclusion of the last. If the period would expire during a weekend or on a holiday, receipt on the next workday is timely.

b. **Notice of Disagreement Not Timely Filed.** Upon receipt of a notice of disagreement which is not timely filed, the claimant will be informed that the action taken by the agency of original jurisdiction became final at the expiration of the applicable time limit. However, if a clear and unmistakable error is alleged in a prior decision, an appeal may be made from a determination that there was no error. (See par. 18.01e.)

c. **Referral for Recording of Withdrawal.** See paragraph 18.06d.

d. **Submission of Additional Evidence.** See paragraph 18.05d.

e. **Dispute as to Timeliness.** Decision as to whether an appeal has been timely filed will be made by the BVA after development and certification on such issue.

18.05 DEVELOPMENT OR REVIEW ACTION

a. Following timely receipt of a written notice of disagreement on an appealable decision, the rating board or Authorization, as appropriate, will review the claim and determine whether any development or other action is indicated.

(1) This may include a letter of explanation to the claimant, request for advisory opinion if a policy question is at issue, submission on the basis of a difference of opinion, development of additional evidence, or other indicated action.

(2) All necessary action will be taken to assist the claimant in developing the appeal and obtaining necessary evidence. This does not relieve the claimant of the responsibility of securing and submitting evidence available to him/her in support of the claim.

b. No cases will be forwarded to the BVA until all reasonable assistance has been given to the claimant and all necessary evidence not procurable by him/her but obtainable by the VA is in file. (Also see M1-1, pars. 11.09b and 11.10a.) This may include such items, among others, as:

(1) Developing leads supplied by claimants and their representatives.

(2) Obtaining service department and VA records, such as records pertaining to an injury or disease and treatment.

(3) Obtaining X-ray films for study.

(4) Obtaining hospital reports and reports of examination.

(5) Obtaining complete medical, surgical and hospital clinical records in claims under 38 U.S.C. 351, including VR&E and training subfolder, if based on injury resulting from pursuit of a course of vocational rehabilitation.

(6) Obtaining office records of a physician.

(7) Obtaining evidence relating to industrial activity in a claim for permanent and total disability.

(8) Developing need for regular aid and attendance and housebound status.

(9) Obtaining the dental treatment folder including application for and denial of treatment in old cases in which service connection for teeth or other dental condition is at issue.

c. All development will be completed as quickly as possible to avoid undue delay in the ultimate certification of appeals.

(1) If the evidence obtained does not resolve the disagreement, either by permitting the grant of the benefit sought or through withdrawal by the claimant or his/her representative of the notice of disagreement, the agency of original jurisdiction will prepare a statement of the case.

(2) Care will be exercised to ensure that letters of explanation, notice of actions taken pursuant to advisory opinions, or other correspondence are not misconstrued as appellate dispositions.

d. When additional evidence is needed following receipt of a notice of disagreement, the claimant will be given a period of 60 days. The request will be controlled. At the end of the 60-day period, no further development action will be taken if a response has not been received and a copy of the statement of the case will be furnished on the basis of evidence of record. (See par. 36.05 for contested claims.)

18.06 MAINTENANCE OF APPEALS RECORD

a. **General.** A correspondence clerk in each unit will be assigned the responsibility for preparation of the input form required to establish and update the automated appeal record in the VARMS (Veterans Appeals Records Management System) [ ] as provided in M21-1, part III, chapter 7. These records will reflect the status of appeals from the initial filing of a notice of disagreement through final disposition by the BVA. The record will be created after the Adjudication Division has identified a communication as a timely notice of disagreement as distinguished from a request for information, a claim for increase, a claim to reopen, or a complaint letter not meeting the prerequisites of a notice of disagreement. This determination will call for the exercise of judgment and discretion on the part of Adjudication personnel.

b. **Recording the Notice of Disagreement and Statement of the Case.** When a communication has been identified as a notice of disagreement and any necessary award action pending in the case has been completed, the claims folder will be referred for preparation of VA Form 20-8772, Veterans Appeal Record Code Sheet. [ ]

(1) If pending adjudicative action cannot be completed within 5 workdays, the case will be referred immediately for recording of the notice of disagreement.

(2) The Correspondence activity will refer copy 1 of VA Form 20-8772 to the [VARMS coordinator] and copy 2 of that form [ ] will be filed on the left inside flap (awards section) of the claims folder and maintained on top of all other material until final disposition of the appeal (M23-1, pt. I, [ ] par. 7.05a).

(3) When a statement of the case is furnished, section II of the file copy of VA Form 20-8772 [ ] will be annotated accordingly and VA Form 20-8773, Veterans Appeal Action Card, will be prepared to update VARMS (M23-1, pt. I, [ ], par. 7.07).

c. **Receipt and Recording of Substantive Appeal.** Upon receipt of VA Form 1-9, Appeal to Board of Veterans Appeals, in the Adjudication Division, the claims folder will be checked for the VA Form 20-8772 [ ] showing a notice of disagreement has been recorded and that a statement of the case has been furnished and recorded.

(1) If no statement of the case has been furnished, the VA Form 1-9 will be considered a notice of disagreement, not a substantive appeal, and the case will be processed under the foregoing subparagraph b.

(2) If a statement of the case has been furnished, the receipt of a substantive appeal will be annotated on VA Form 20-8772 [ ], and VA Form 20-8773 will be prepared for [entry] to the VARMS record prior to consideration of the appeal.

(3) The same procedure for recording will be followed if it is determined in the Adjudication Division that correspondence received after a statement of the case has been furnished may be construed as the *equivalent* of a substantive appeal. If so, the correspondence will be identified by annotation as the "Substantive Appeal."

d. **Withdrawn Notices of Disagreement or Substantive Appeals.** If it is determined by the Adjudication Division that the notice of disagreement may be considered withdrawn because the benefit sought has been granted (par. 18.20), or the claimant has requested withdrawal (par. 18.21), [ ] the appropriate disposition entries will be made on the file copy of VA Form 20-8772 (M23-1, pt. I, par. [7.09b(3)]). In addition, the claims file will be referred for preparation of VA Form 20-8773 to update the VARMS record. [ ] (See also par. 18.28d.)

e. **Reactivation of Appeals.** See paragraph 18.22.

f. **Followup**

(1) **After Recording Notice of Disagreement.** If, at the expiration of the third calendar month following receipt of a notice of disagreement, the appeal has not been withdrawn and a statement of the case has not been furnished the claimant, the case will be referred to the activity responsible for preparation of the statement of the case.

(2) **After Claimant Has Been Furnished Statement of the Case.** If a substantive appeal has not been received at the expiration of 60 days following the date the statement of the case was furnished, the appeal will be closed by [appropriate entries on the file copy of VA Form 20-8772 and on VA Form 20-8773]. (See M23-1, pt. I, [ ], par. [7.09b(3)(c)].)

(3) **After Receipt of Substantive Appeal.** If, after the expiration of 3 months following receipt of the VA Form 1-9, and the VARMS record has not been updated to indicate the folder has been forwarded to the BVA, the case will be reviewed by Adjudication to ascertain the status of the appeal and for update of the control.

g. **Misrouting.** If an appeal (or followup) has been erroneously routed to the Adjudication Division, it will be rerouted to the activity having jurisdiction over the appeal.

18.07 STATEMENT OF THE CASE—PREPARATION

a. **General.** If, after review and any necessary development, the disagreement has not been resolved through the granting of the benefits sought or withdrawal of the notice of disagreement, a statement of the case will be prepared. The statement of the case will be limited to matters relevant to the issue or issues with which disagreement has been expressed. The statement of the case, in essence, is an explanation of the decision. Its purpose is to provide the claimant with sufficient information concerning the decision at issue for complete understanding and, if not satisfied, to permit preparation of an effective substantive appeal with specific allegation of errors of fact and/or law. (See subpar. c below and exhibit A at the end of this chapter for the format of the statement of the case.)

b. **Responsibility for Preparation.** The office of original jurisdiction (par. 18.01a) will be responsible for preparation of the statement of the case. (See also par. 18.23 re certification of appeal.) Depending on the issue, statements of the case will be signed by the rating specialist or the person in Authorization responsible for preparation and submission. In those cases in which the appealable issue is a determination made for special purposes, responsibility for preparation of the statement of the case is as follows:

(1) **Forfeiture Decisions.** See paragraph 20.08.

(2) **Clothing Allowance.** See paragraph 24.17k.

(3) **Automobile and Adaptive Equipment.** See paragraph 30.06g.

(4) **Specially Adapted Housing.** See paragraph [30.07j.]

(5) **CHAMPVA.** See paragraph 30.12c.

(6) **Special Allowance—Sec. 412a.** See paragraph 40.19.

c. **Format.** The statement will be prepared in an orginal and 3 copies. FL [1-25a] will be used as the first page of the statement of the case. Nonletterhead stationery will be used for succeeding pages. (See par. 18.10 re supplemental statements.) The statement of the case is divided into the following parts:

(1) **Notice to Appellant.** This notice is preprinted on the FL [1-25a.] If the claimant has a representative, an appropriate entry will be made; otherwise, "None" will be entered.

(2) **Issue.** State the issue(s) covered in the statement of the case in the space provided. If there is more than one, each issue should be stated separately and numbered. In order to further identify the areas of disagreement, a brief statement of the claimant's contentions should be set forth immediately below.

(3) **Summary of Evidence.** All evidence relative to the issues being considered, such as medical treatment, places and circumstances of service, employment, age, education, etc., will be summarized. Short quotations are permissible, when appropriate, for clarity and accuracy. Subheadings may be used also for the sake of clarity. For example, if service connection is at issue, the subheadings may include PRESERVICE TREATMENT, MILITARY MEDICAL RECORD and POSTSERVICE MEDICAL RECORD.

(4) **[Adjudicative] Actions [Taken].** Only those rating and authorization actions relative to the issues raised should be discussed. When the circumstances are such that "Summary of Evidence" and "[Adjudicative] Actions [Taken]" may be combined without sacrifice of clarity, it is permissible to do so, listing the entries in chronological order under the caption SUMMARY OF EVIDENCE AND [ADJUDICATIVE] ACTIONS [TAKEN].

(5) **Pertinent Law, Regulations, and Rating Schedule Provisions.** VA regulations, Schedule for Rating Disabilities and sections of the U.S. Code which are pertinent to the issues will be cited and discussed. Citations to the VA regulations and the Schedule for Rating Disabilities will be given in CFR numbers.

(6) **Decision.** The decision [made] on the issue(s) raised will be stated. If there is more than one issue, the decision [made] on each issue will be numbered to correspond with the number by which that issue is identified in the statement of the case.

(7) **Reasons for Decision.** An analysis and explanation of the criteria on which the decision is based will be furnished. This portion of the statement of the case will clarify and reduce to simple terms the technical language of the laws, regulations, etc., in their application to the evidence and issues. When required, the reasons for decision will be numbered to correspond with the issues and decisions.

d. **Signature and Review.** Only the original of the statement of the case will be signed and dated by the person who prepared and reviewed it. This applies to statements of the case whether prepared by a rating specialist or Authorization personnel. The entire file will then be forwarded to the designee of the Adjudication Officer who will review the statement of the case for accuracy and completeness and will record approval by affixing his or her signature and the date of approval below that of the document's author. That original will also be the file copy.

18.08 FURNISHING STATEMENT OF CASE TO CLAIMANT AND HIS/HER REPRESENTATIVE

a. A copy of the statement of the case, without signatures, will be transmitted by FL 1-25 to the claimant (fiduciary, if applicable) with VA Form 1-9 as provided in paragraph 18.11. A copy of the statement of the case, which may or may not be identical to that sent to the claimant (see subpar. 18.09c), will be furnished to the claimant's representative; i.e., agent, attorney, or accredited representative. (See VAR's 9928 through 9932.)

b. The case will be referred to the correspondence clerk to record the date the statement of the case was mailed. (See M23-1, pt. I, [ ], par. [7.09b(1)(b)])

18.09 MATTERS NOT TO BE DISCLOSED IN THE STATEMENT OF THE CASE

A statement of the case may not disclose matters that would be contrary to 38 U.S.C. 3301 or otherwise contrary to the public interest (38 U.S.C. 4005(d)(2)). However, due process requires that the statement of the case contain a *summary* of the evidence pertinent to the issue(s) raised by the disagreement.

a. **General.** Matters not to be included on the basis they would be injurious to the physical or mental health of the claimant will include:

(1) Those so considered by responsible medical authority, especially the more severe psychiatric disorders;

(2) Reference to a prognosis of "poor," "terminal," etc., or to conditions of misconduct origin unless relevant to the issue; or

(3) Sources of information which might provoke feelings of hostility, resentment or rejection on the part of the claimant or his/her family.

NOTE: Such matters may be disclosed to the claimant's designated representative unless the relationship between the claimant and the representative is such that disclosure to the representative would be as harmful as if made to the claimant. Thus, in some cases, when it is permissible to furnish full information to the representative, two different versions of the statement of the case will be prepared.

b. **Claimant Without Representative.** When the claimant does not have a representative and the record contains matters not to be disclosed, the statement of the case will be prepared to eliminate such specific references but providing the necessary summary of pertinent evidence. The file copy will be annotated to reflect such action.

c. **Claimant With Representative.** When the claimant has a representative and it is determined that matters not included in the claimant's statement of the case may be released to the representative, a full statement of the case will be prepared and furnished the representative. A separate statement with the matters not to be disclosed omitted will be prepared and

copies furnished the representative and the claimant. The copy for the representative and the file copy of the full statement will be annotated to show portions were deleted from the copy furnished the claimant, together with a notation that the material omitted from the claimant's statement is not to be divulged to him/her.

(1) When, however, it is determined that the information omitted from the claimant's statement should not be disclosed to the representative, a modified statement omitting such matters will be prepared and copies furnished the claimant and the representative.

(2) The file copy (original of statement of the case) will be annotated to show that matters not to be disclosed to the claimant nor his/her representative were omitted from their copies.

18.10 SUPPLEMENTAL STATEMENT OF THE CASE

a. A supplemental statement of the case will be prepared in the same format as the initial statement, except that FL 1-28a will be used. It will be mailed to the claimant and any representative when:

(1) New and material evidence has been introduced.

(2) An amended decision has been [made.]

(3) A material error in the statement of the case has been discovered.

b. The supplemental statement of the case will be so designated and will be limited to essential changes or additions to sections of the original statement adequate to give complete information to the claimant. The prior statement will not be repeated. The claimant will be informed that the supplemental statement of the case amplifies the statement of a prior date.

c. FL 1-28 will be used in transmitting a supplemental of the case. A 30-day control will be established. At the end of that time, the appeal may be certified if no further action is required.

d. The case will be referred to the correspondence clerk for VARMS control. (See M23-1, pt. I, [ ], par. [7.09b(2)(b)])

18.11 FURNISHING VA FORM 1-9

a. **When VA Form 1-9 Is To Be Furnished.** VA Form 1-9 will be transmitted with the letter forwarding the statement of the case. The FL 1-25 provided will be adequate in most cases but a dictated letter should be used when circumstances warrant. The letter will contain:

(1) Notice of the right to file a substantive appeal and of the time within which it should be filed (within 60 days—30 days in contested claims);

(2) Advice that if, after reading the statement of the case, the claimant still desires appellate review by the BVA, he or she should state on VA Form 1-9 the specific fact or law cited in the statement of the case which they believe to be in error;

(3) Notice that any statement of fact contained in the statement of the case to which no exception is taken will be presumed correct and agreed upon.

b. **Attachment to VA Form 1-9 for Residents of Philippines.** When VA Form 1-9 is furnished to a claimant residing in the Philippines, the following statement will be attached to the letter of transmittal. (This statement is available in printed form for use in the WRO (Washington regional office) as an attachment.)

HEARING ON APPEAL

A hearing on appeal should not be requested unless the claimant actually intends to make a personal appearance before a hearing agency at Manila. Any expense involved in connection with a hearing, including expenditures for transportation to and from Manila, lodging, food, etc., may *not* be borne by the Government. Hearings are not necessary. All the evidence of record including any statements or affidavits submitted by the claimant or in his or her behalf, receives the same thorough consideration, whether or not a hearing is held. [ ]

c. **Failure of Claimant To Respond to Statement of the Case.** When VA Form 1-9 has been furnished with the statement of the case and no response is received from the claimant or representative within the time provided above, the case will be closed by the agency of original jurisdiction. The decision of that agency will constitute final *administrative* action on the claim. No control will be established to followup on whether an appeal is subsequently filed. If response is subsequently received within the original appeal period, the appeal will be reactivated.

d. **Protest in Cases Administratively Closed.** If, after a case is closed as provided above, a claimant or representative files a substantive appeal from that decision, the claim will be referred to the BVA for determination of jurisdiction regardless of the interval of time which may have elapsed from date of appealed decision. (Also see par. 18.01e.)

18.12 REQUIREMENT OF SUBSTANTIVE APPEAL

a. For consideration as a substantive appeal, the receipt of VA Form 1-9, adequately executed, or its equivalent in correspondence, is required. Adjudicating personnel, in considering appeal cases, should treat the statements as to the basis for appeal in a liberal manner as claimants generally are not familiar with the technicalities of the law and therefore are unable to make a specific statement as to "mistake of fact or error of law."

b. In the absence of unusual circumstances, certification of the appeal to the BVA should not be held up solely because of what might be regarded as an unsatisfactory statement of error or mistake of fact by the claimant. If the appeallant's belief as to mistake of fact or error of law is expressed or implied in some form in the correspondence or other records, certification will not be deferred for elaboration or clarification.

18.13 SUBSTANTIVE APPEAL PROCEDURE—GENERAL

When the claimant files a substantive appeal, the Adjudication Division element concerned will review the appeal together with the entire record and take appropriate action as follows:

a. Award the benefit sought; or

b. Certify the case to the BVA; or

c. Determine the appeal is deficient in specification of errors of fact or law and advise the claimant and any representative of the substantive deficiencies noted and afford a reasonable time (usually 30 days) for the appeal to be amended to cure the defect. If the claimant does not take advantage of this opportunity the case will be referred to the BVA for appropriate action; or

d. Prepare a supplemental statement of the case if it is discovered that the original statement contained material error or it is discovered that the statement of the case was materially deficient.

e. Take supplemental development action if indicated (par. 18.05).

18.14 CONTROL OF PENDING APPEALS

a. Control and Followup. An accurate control and followup procedure is required to insure appropriate development of pending appeals. Once a substantive appeal is filed, it is essential that the appeal be perfected and certified without unnecessary delay. (See par. 18.06c re recording of appeal, and par. 18.28 re remanded cases.)

b. Failure To Furnish Requested Evidence Within Time Limit

(1) When the appellant has not reported for examination, or, through unreasonable delay or failure to cooperate, has not submitted requested evidence or leads within 60 days (which period may be extended for a reasonable period for good cause shown), the appeal will be certified and forwarded to the BVA for appellate review on the basis of the evidence of record.

(2) In those instances in which the claimant or representative does not indicate the desire to submit additional evidence and the availability of essential additional evidence is not otherwise indicated, the appeal will be certified in accordance with paragraph 18.23 or 18.28.

c. Elimination of Unnecessary Examinations. Medical examinations in cases in which appeal is pending will not be conducted *solely* because of the presentation of the appeal. Certification of an appeal will not be deferred pending the completion of any scheduled medical examination unless:

(1) Report of such examination is considered necessary for determination of the issue involved, or

(2) Reconsideration following the presentation of an appeal leads to the conclusion that an examination or reexamination is necessary for equitable determination.

18.15 ADMINISTRATIVE APPEALS AND MERGED APPEALS

Directors and Adjudication Officers are authorized to file administrative appeals from an adjudicative action (38 CFR 19.124). (See also par. 19.02.) Such appeal by an Adjudication Officer must be made within 30 days; Directors are allowed 6 months in which to file.

a. The administrative appeal will be made by memorandum for file entitled "ADMINISTRATIVE APPEAL," setting forth the issues and the basis for the appeal. Prompt notification will be given to the claimant and representative concerning the question at issue and the right of appearance or representation and that a period of 60 days will be permitted for this purpose.

(1) A copy of the memorandum or an adequate summary thereof will be furnished so that the claimant can better determine whether to join in the appeal.

(2) The claimant will also be advised of the effect of such action and preservation of normal appeal rights if he/she does not elect to join.

b. If, upon being informed of the administrative appeal, the claimant or representative elects to present additional evidence or argument, such election will be deemed to be an expression of disagreement. A statement of the case will be prepared as provided above and a copy furnished the claimant and representative, together with notice of the time in which a substantive appeal should be perfected.

c. Should a substantive appeal then be submitted, the administrative appeal will be considered as merged into the claimant's appeal and the case will be handled in accordance with procedures governing appeals by claimants or their representatives including establishment of a VARMS record as provided in paragraph 18.06 b and c.

d. The fact that the BVA has made a decision on an administrative appeal does not preclude a claimant or representative who has not merged their appeal from submitting a notice of disagreement and substantive appeal on the same issue within the prescribed time limit and obtaining further review by the Board.

18.16 REVIEW PRIOR TO CERTIFICATION TO BVA

When a substantive appeal is received, it will be referred with the claims folder to the rating board or Authorization, as appropriate, for review to determine whether the claim has been considered under all applicable laws, regulations and instructions, and whether all prior actions are correct. Consideration should also be given the question of completeness of the case in every respect, including development of evidence, adequacy of the statement of the case furnished and whether due consideration has been given the issues raised in the appeal or other data incidental to the appeal.

a. **Appeals Based on Rating Decisions.** When service connection is involved, the claims file will be examined by the rating board to ensure that all indicated service medical records are included. If it is determined that no new rating issues have been raised in connection with the appeal and that all contentions or allegations made by the claimant or representative have been properly and adequately disposed of, VA Form 21-6790, Rating Decision on Appeal, will be executed and the appeal referred for certification.

b. **Appeals Based on Authorization Decisions.** The claims file will be reviewed by Authorization personnel with particular attention to whether all issues raised on appeal have been identified and that all contentions and allegations made by the claimant or representative have been properly and adequately disposed of and no further development is required. If so, the appeal will be referred for certification.

c. **Responsibility for Certification.** See paragraph 18.23.

[NOTE: If new evidence is submitted or new issues raised concerning any issue under appeal, a supplemental statement of the case is required. (See par. 18.10.) If a supplemental statement of the case is not required, certify the appeal to the BVA under paragraphs 18.23 and 18.24. If a new claim, independent of any issue raised on appeal, is submitted on or with the substantive appeal, first certify the issue(s) under appeal to the BVA. Then treat the new independent issue as a separate claim. Notify the claimant of the status of the new claim. Explain to the claimant that an appeal concerning the new claim cannot be initiated until the VA makes a decision and provides notice.]

18.17 HEARINGS, GENERAL

a. **Request for Hearing.** The claimant or the representative in an appealed case may elect to have a hearing before the BVA in Washington, DC, or make a personal appearance at the regional office prior to the submission to the BVA. (See also M23-1, pt. I, par. 7.09b(2)(c).)

(1) If a local hearing is desired, it will be held, insofar as possible, before the rating board personnel or other Adjudication Division element which did not participate in the decision which is appealed. (See par. 14.36g.) When a hearing is scheduled, VA Form 1-4297, Your Personal Hearing, is available as an enclosure to the letter notifying the claimant of the time and place of the hearing. It is intended for optional use to explain briefly an appellate hearing to the claimant.

(2) Hearings, generally, will be held within 30 days.

(3) When it is not clear as to the claimant's desire for a hearing before a section of the BVA, it should be clarified before certification.

(4) The power of attorney of record must be fully advised regarding any arrangement for a personal hearing.

(5) If a request for hearing is not stated on VA Form 1-9 or other correspondence, it will be understood that a hearing is not desired, and certification of the appeal will not be delayed for the purpose of ascertaining whether or not a hearing is desired.

b. **Purpose of Hearing.** Hearings are held primarily for the purpose of receiving the contentions and oral argument of the claimant or representative rather than to hear testimony, although on occasions witnesses testify at hearings. It is required that oral argument and testimony be relevant and material to the question at issue, and that all testimony be under oath or affirmation (38 CFR 3.200). (Also see par. 45.12.)

c. **Transcript of Hearing.** Argument and testimony introduced at the hearing should be recorded and a complete transcript thereof included in the record for consideration of the BVA.

d. **Place of Hearing.** Hearings may be held in the office of original jurisdiction or any other field office, acting as a hearing agency for the BVA, or before a section of the BVA in Central Office. A request for a hearing to be held in another VA office near to the appellant's residence will be transmitted to the office having original jurisdiction in order that the complete folder may be transferred to the adjacent regional office for the hearing. Upon completion of hearing in these cases, the claims file will be returned to the office of original jurisdiction with a complete transcript of the hearing for appropriate action, including certification to the BVA, if in order.

e. **Composition of Hearing Panel.** Hearings will be held before personnel who are authorized under the regulations and instructions to participate in original determinations on questions involved in the appeal. [ ] (See also [par.] 18.18a.)

f. **Employee-Veteran Hearing.** A hearing in connection with an appeal of an employee-veteran *may*, if requested, be held at the station of employment. If so, precautionary measures must be taken to insure full compliance with VA directives relating to the confidential nature of the veteran's records, particularly the prohibition against permitting an employee-veteran to have uncontrolled access to custody of his or her own claims folder. However, no determination in the case will be made except by the office of jurisdiction.

g. **Local Hearing in Lieu of Hearing Before Board of Veterans Appeals.** A formal hearing on appeal at a regional office will be in lieu of such a hearing before the BVA, except in the unusual case in which a special appearance by the claimant before the BVA, or the special attention of an accredited organization's headquarters in Washington, D.C., is requested by the appellant.

h. **Reversal After Hearing.** The formal hearing before the rating board or Authorization personnel will not serve as the basis for the reversal of the appealed decision, except in case of clear and unmistakable error or when additional evidence is introduced warranting amendment or reversal of the decision appealed. (See par. 18.20.)

i. **Waiver of Hearing by Representative.** If a hearing has been requested by an appellant, a waiver of hearing by the representative does not automatically dispose of the request. In such case, unless the appellant confirms the waiver a hearing will be scheduled before the appeal may be forwarded to the BVA.

18.18 CONDUCT OF HEARINGS

a. General Policy

(1) The due process requirements stated in [38 CFR 3.103] are for application throughout the adjudicative process. An integral part of due process is the right of a claimant, upon request, to a hearing at any time on any issue involved in a claim within the purview of [38 CFR 3.1 through 3.1612] inclusive.

(2) Hearings are to be conducted in a manner to comply with due process requirements and to properly reflect the nonadversary relationship between the VA and the claimant. The following is for application in all hearings conducted by VA Adjudication personnel and includes, but is not limited to, hearings before rating boards and hearings concerning character of discharge. (See pars. 18.17 and 45.12 for additional information in specific cases.)

(3) Hearings should be conducted before Adjudication Division employees who have decisionmaking authority over the issues involved. Normally, hearings will be conducted at the regional office of jurisdiction. However, when the situation warrants, hearings may be conducted at VA medical centers or other VA installations by Adjudication Division employees.

b. **Presentation of Evidence.** The claimant will be permitted to introduce into the record, in person or by a duly authorized representative, any evidence available to the claimant which that individual may consider material. This includes arguments and contentions with respect to the facts and applicable law which the claimant may consider pertinent.

c. **Ex Parte Nature of Hearings.** It is imperative that Adjudication personnel remember that proceedings before the VA are ex parte in nature. It is the obligation of the VA to assist a claimant in developing facts pertinent to the claim. A hearing is not adversary proceeding and questions by VA employees in the nature of cross-examination are not permissible. All questions

are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence and discredit testimony. Suggestions to the claimant as to submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position should be made.

d. **Preparation for Hearings.** Prior to the hearing all Adjudication personnel involved should familiarize themselves with the evidence of record in the particular case. This will include a review of the issues and evidence. Consideration should be given to the nature of evidence necessary for the claimant to establish entitlement to the benefits. Tentative questions to be asked should be formed at this time. Persons assigned to the hearing should not wait until just prior to the hearing or during the hearing to review the claim file.

e. **Hearing Facilities.** Hearings must be conducted in a proper atmosphere. A hearing room with furniture in good repair, adequate lighting, heating or air-conditioning should be available. The furniture arrangement should be so everyone in the room can see and hear the witnesses. The United States flag should be appropriately displayed. The appearance and atmosphere of a formal trial or such like proceedings is to be avoided. Hearings are not to be conducted in the Adjudication work area.

f. **Decorum of VA Personnel.** For many claimants the hearing may be the only personal contact they will have with the VA. Their opinion of the VA will to a great extent be influenced not only by proper hearing facilities but by the conduct and appearance of VA personnel. Appropriate dress and conduct are required. Courteous treatment of the claimant and witnesses, attention to the proceedings and an overt interest in assisting the claimant are expected of VA personnel.

g. **Arrival of Claimant.** Upon arrival, the claimant, witnesses and representative, if there is one, will be taken to the hearing room or other appropriate area. They will not be left remaining in the Adjudication work area. The chairperson and other members of the hearing panel will be immediately notified and they will proceed to the hearing room without undue delay.

h. **Initial Proceedings**

(1) **Introduction of Parties.** Members of the hearing panel will introduce themselves to the claimant and any witnesses. Care will be exercised to get correct pronunciation of names.

(2) **Absence of Service Representative.** If the claimant does not have a veterans service organization representative present and is not represented by an attorney, the [chairperson] will explain the availability of a veterans service organization representative or assistance by a member of the Veterans Services Division. The claimant will be informed there is no obligation to join a veterans service organization and that there will be no charge for representation if the claimant desires the assistance of a member of a veterans service organization. The claimant will also be informed that representation is not mandatory. If the claimant indicates a desire for a representative, the claimant and witnesses will be taken to the appropriate veterans service organization. The situation will be explained and a time for resumption of the hearing, allowing adequate time for review of the evidence, will be set.

(3) **Explanation of Proceeding.** If a representative is present or the claimant desires to proceed without representation, the purpose and nature of the hearing, as discussed in subparagraphs b and c, will be explained. Emphasis on the information gathering aspects of the hearing is to be stressed. The necessity for and use of recording equipment will be explained and the claimant informed that a copy of the transcript will be placed in the file and, if requested, a copy will be furnished to the claimant. The claimant and witnesses will be informed that if they desire to "go off the record" to collect their thoughts or for clarification of any matter, they may so indicate and the recording will be temporarily stopped. The necessity of an oath or affirmation will be explained.

(4) **Presence of an Attorney.** If the claimant is represented by an attorney, the [chairperson] will explain the proceedings as indicated above. Emphasis should be placed on the informality of the hearing. The attorney will be told that rules of evidence do not apply and that leading questions are permissible.

i. **Administration of Oath or Affirmation.** The chair will request the claimant and witnesses to stand and raise their right hands. An appropriate oath will be administered which in substance states, "Do you swear (or affirm) the testimony you are about to give will be the truth, the whole truth and nothing but the truth?" The oath will be administered prior to commencement of recording of the hearing. If the claimant or any witness refuses to take the prescribed oath or affirmation, he or she should be allowed to take an affirmation in which the person makes a solemn declaration using such words as he or she considers binding on his or her conscience.

j. **Statement of Issues.** Prior to commencing testimony a statement of the issues, as shown by the evidence, should be made. The claimant and the representative will be asked if this is their understanding of the issues. If there is a misunderstanding of the issues, clarification should be made at that time. This will not be used to limit the scope of relevant issues or to indicate to the claimant that testimony is to be curtailed. If additional issues are raised by the claimant or representative at this point or during the hearing they are to be properly considered and not ignored.

k. **Opening Statement.** Recording of the hearing will start with the chair's opening statement. This statement will include the fact that a hearing is being held, date and time of commencement of the hearing, authority before which the hearing is being held, name of veteran, name of claimant if not the veteran, file number, and that the claimant and witnesses have been duly sworn in. A brief statement of the issue will be made. If present, the representative or attorney will be asked if he/she desires to make an opening statement, otherwise, the claimant will be given this opportunity. The representative or attorney will be allowed to introduce the claimant's testimony and ask questions concerning the same.

l. **Conduct of Hearing**

(1) **General.** Whether the claimant or witnesses should be interrupted by questions or to suggest areas which should be further developed during the course of their testimony will depend upon the individual hearing. While it may appear the testimony is irrelevant and rambling it must be remembered the purpose of the hearing is to permit the claimants to present their case subject to maintenance of reasonable bounds of relevancy and materiality. While pertinent questions may be asked during testimony, care and tact should be exercised in limiting the witness in order to guard against any indication that his or her testimony is not of importance.

(2) **VA Personnel Participation.** Subsequent to the claimant's testimony VA personnel should ask pertinent questions consistent with the ex parte nature of the hearing. If a medical question is at issue, there should be no hesitancy on the part of the medical member of the hearing panel to observe and comment on the claimant's condition, especially if requested to do so by the claimant or representative. Based on the observation by the medical member, any indicated development, including the scheduling of a VA examination, should be taken as soon as practicable. (See par. 45, 12c.) Questioning should be initiated by the chair with each member given an opportunity, in rotation, to ask questions. While cross-examination is to be avoided, it is important that the claimant be questioned sufficiently to develop fully all contentions to present the claim in its best light.

(3) **Witnesses.** After the claimant's testimony and questioning by members of the panel, the witnesses will be given an opportunity to testify. It is recognized that some representatives and attorneys may desire that the witnesses testify immediately after the claimant and prior to any questions by the panel. In such cases the panel will question the claimant and witnesses after the completion of testimony by the witnesses. Prior to the questioning of the claimant by the panel, the claimant should be asked if there are any objections to any of the witnesses being present. If an objection is raised, the witness or witnesses should be excused.

(4) **Summary.** After completion of the testimony, including discussion of any area raised by questions from the panel, the claimant will be given an opportunity to make a final statement. The representative, if there is one, will also be requested to make any closing statement he or she desires. Prior to termination of the hearing the chair will ask if there is anyone present who has additional comments or testimony before the hearing is completed. Upon completion of the hearing the chair will note the time.

(5) **Guidelines.** The conduct of a hearing is governed generally by rules of procedure set forth in Rules of Practice of the BVA. Nonsubstantive variances in individual offices and in individual cases are to be expected. The primary rule is that the

claimant and witnesses be allowed to present their testimony and that the members of the panel make constructive suggestions as to evidence the claimant may submit to establish entitlement. Those guidelines are not to be used restrictively.

m. **Posthearing Notification.** The procedure [ ] VA will follow in the particular claim regarding notification to the claimant of the decision and the claimant's appellate rights in the event of an adverse decision will be explained. The claimant and witnesses will be escorted from the Adjudication area and not left to find their own way out of the area.

18.19 VA FORM 1-646, STATEMENT OF ACCREDITED REPRESENTATIVE IN APPEALED CASE

a. **General.** In a case in which it appears that the appellant wishes to be represented by an attorney or service organization, the folder should contain a properly executed unrescinded power of attorney or VA Form [21-22], Appointment of Veterans Service Organization as Claimant's Representative. If a service organization has been designated as a representative, the record will show whether the representative has been given an opportunity to appear for a hearing or to make other presentation of the appeal.

b. **When VA Form 1-646 Is in Order.** The representative of the service organization will be given an opportunity to execute VA Form 1-646 immediately prior to certification of appeal in [all cases.]

[c.] **Completion of VA Form 1-646**

(1) Entries in the heading of VA Form 1-646 will be made by Adjudication Division. The entry for "Reply Requested By (Date)" will be determined in accordance with locally established rules designed to insure no unwarranted delay.

(2) If the local service representatives regularly examine the claims folders in the Adjudication Division, only one copy of the VA Form 1-646 will be prepared and attached to the outside of the claims folder, which will be placed on the table designated for service organization reviews. Otherwise, this form will be prepared in duplicate; the original being referred to the representative and the copy retained on the claims folder as a visual control.

[d.] **Action on Failure of Representative To Submit VA Form 1-646.** In the event VA Form 1-646 is not executed and submitted within a reasonable period (usually the second workday after the date of "Reply Requested") and there has been no request for an extension on time for review, the VA Form 1-646 will be so annotated, filed in the claims folder and certification of the appeal will proceed.

18.20 APPEALS CONSIDERED WITHDRAWN ON BASIS OF GRANT OF BENEFITS SOUGHT

a. **General.** If additional evidence is received prior to the forwarding of the claims folder to the BVA, the case will be referred to a rating or authorization element as indicated. If a favorable decision is justified, the rating or authorization element is

authorized to make such decision as is warranted upon reconsideration. The decision will contain a complete statement of facts stressing the new basis upon which the favorable action is predicated, with such discussion as is necessary to show clearly the basis of allowance over prior denials. Personal appearance on the part of the claimant or representative, if requested, will be permitted in connection with the consideration of such additional evidence.

b. **All Benefits Allowed.** If, after filing a notice of disagreement, all benefits sought are allowed for the entire period covered by the appeal, without BVA review, the appeal will be considered withdrawn and the claimant so advised.

c. **Allowance of Substantially All Benefits.** The grant upon reconsideration of part of the benefits for which the appeal was originally initiated does not in all instances dispose of the claimant's appeal. Automatic or arbitrary withdrawal of an appeal would constitute an improper restriction of appellate rights.

(1) However, when it is apparent that the benefit granted upon reconsideration substantially meets the contentions of the claimant as evidenced by the notice of disagreement, formal appeal, the hearing transcript, and correspondence of record, consideration by the BVA may, in fact, no longer be desired.

(2) In such instances, the appellate rights of the claimant require that he or she be advised by letter that the benefits allowed have been granted without appellate review and explaining in detail the reason for denial of other benefits. The letter should also include:

(a) An inquiry as to whether the revised status of the claim satisfies the purpose of the appeal and whether he or she wishes to continue [the] prosecution in view of the changed circumstances.

(b) Information that in the absence of a reply to the contrary within 30 days, it will be assumed that the substantial grant of benefits sought meets the claimant's contentions and that the notice of disagreement or appeal will be considered withdrawn, subject to the right to reactivate it any time during the remainder of the appeal period, or within 30 days of the date of the letter of notification, whichever is later.

d. **Referral for Recording of Withdrawal.** See paragraph 18.06d.

18.21 WITHDRAWAL OF APPEAL

a. **Withdrawal at Request of Appellant.** An appeal or notice of disagreement may be withdrawn by written request of the appellant or, if signed and filed by the duly authorized representative (person or organization), it may be withdrawn by such representative prior to appellate consideration, unless withdrawal of the appeal would be detrimental to the appellant or to the Government. (See par. 18.06d.)

NOTE: A representative may not withdraw either a notice of disagreement or substantive appeal if either were filed by the claimant personally (VAR 9921).

(1) If less than substantially all of the benefits sought are granted prior to filing a substantive appeal, a statement of the case will be furnished.

(2) If, after substantive appeal and without appellate review, the claimant is granted an allowance which is substantially less than all benefits sought, the claimant will be informed that appellate review will proceed unless request for withdrawal is received within 30 days after the date of the letter of notification.

b. **Withdrawal by VA.** Appeals may also be withdrawn by the VA on the basis of allowance of benefits. (See par. 18.20 b and c.)

c. **Appeals Not To Be Withdrawn Because of Nonreceipt of Evidence.** (See paragraph 18.14b.)

18.22 REACTIVATION OF APPEALS SUBSEQUENT TO WITHDRAWAL

After a notice of disagreement or substantive appeal has been withdrawn, it may be reactivated by the claimant or the authorized representative, provided a request is received by the VA within the remaining appeal period. If the appeal is not so reactivated, the action from which appeal was taken will be regarded as final. In the event that an appeal withdrawn for any reason is subsequently reactivated pursuant to the request of the appellant or representative or for any other reason, the folder will be referred to the Correspondence activity for reestablishment of the appeal record (M23-1, pt. I, [ ], par. 7.05c).

18.23 RESPONSIBILITY FOR CERTIFICATION

a. Appeals From Authorization or Rating Decisions

(1) **Authorization Decisions.** Certification of substantive appeals from authorization decisions will be made to the BVA by the designee of the Adjudication Officer. These include decisions made at the request of other activities or non-VA agencies. Appeals from determinations made under 38 U.S.C. Chapter 35, Survivors' and Dependents' Educational Assistance, by Authorization, such as relationship, will be certified by an authorizer in the office having possession (permanent or temporary) of the claims folder.

(2) **Rating Decisions.** Certification of substantive appeals from rating decisions will be made to the BVA by the rating board [chairperson] or the designee of the Adjudication Officer in the absence of the [chairperson.] These include appeals made from adverse rating decisions in 38 U.S.C. Chapter 35, Survivors and Dependents' Educational Assistance, cases.

NOTE: Appeals from determinations by [. A regional office and] insurance center will be certified by that activity.

b. Appeals Based on Opinions of District Counsel or General Counsel

(1) **New and Material Evidence Not Submitted.** Except as provided in subparagraph c(2) below, when an appeal is initiated as a result of a determination based on an opinion of the District Counsel or General Counsel and no new and material evidence is submitted, the statement of the case will be prepared by the Adjudication Division and, when, in order, the appeal will be certified to the BVA by the designee of the Adjudication Officer.

(2) **New and Material Evidence Submitted.** If new and material evidence is received in connection with a notice of disagreement based on the District Counsel's opinion, the folder will be referred to the District Counsel for reconsideration, preparation of the statement of the case, where applicable, and return to Adjudication Division for release and certification of any substantive appeal. In any case in which a General Counsel's opinion was the basis for the determination, the case will be transferred to Central Office (212B), citing this paragraph as the reason for transfer. The Compensation and Pension Service will refer the case to the General Counsel for reconsideration and preparation of a statement of the case if necessary. Certification of the appeal to the BVA will be accomplished by Compensation and Pension Service (212B), if subsequently in order.

c. Incompetent Institutionalized Veterans—Estate Over $1500

(1) **Appeals Certified by Adjudication.** The Adjudication Division will be responsible for notification of determinations and certification of appeals therefrom in cases involving the issue of:

(a) The amount of an award of appropriated funds to a dependent parent based on recommendation of the Veterans Services Officer or designee.

(b) The amount of an award to a chief officer of a non-VA institution of an amount specified by the Veterans Services Officer or designee for the care and maintenance of the veteran.

(c) A disallowance to a parent because dependency is not shown and/or relationship to the veteran is not established. However, in appeals in cases under subparagraphs (a) and (b) above, notice of disagreement as to the determination of need of the parent or adequacy of the amount for care and maintenance will be forwarded to the Veterans Services Officer

who will furnish the claimant a statement of the case and, if a substantive appeal is filed, a memorandum for the file to show review was accomplished and the appealed determination was not modified to permit grant of the benefit in issue.

(2) **Appeals Certified by Veterans Services Officer.** The Veterans Services Officer will be responsible for notification, processing (including preparation of the statement of the case), and certification of appeals by:

(a) A parent determined not in need or that the needs of the parent are to be met from the veteran's estate or PFOP, and no payments or partial payments will be made for support from appropriated funds.

(b) The veteran's fiduciary when it is determined that no amount for the care and maintenance in a non-VA hospital of the veteran is payable from appropriated funds.

NOTE: If a parent is dissatisfied with the Veterans Services Officer's determination as to the amount to be paid from PFOP, the case will be forwarded with a statement of all the facts to Director, Veterans Assistance Service (271), for an administrative review.

d. **Administrative Appeals.** No certification is necessary in an administrative appeal unless merged with an appeal by the claimant. (See par. 18.15.)

e. **Forfeiture Decisions.** See paragraph 20.08.

f. **Clothing Allowance.** See paragraph 24.17k.

g. **Automobiles and Adaptive Equipment.** See paragraph 30.06g.

h. **Specially Adapted Housing.** See paragraph [30.07].

i. **CHAMPVA.** See paragraph 30.12c.

j. **Special Allowance.—Sec. 412a.** See paragraph 40.19.

18.24 VA FORM 1-8, CERTIFICATION OF APPEAL

a. **Preparation of VA Form 1-8**

(1) An appeal will be certified to the BVA on VA Form 1-8. One such form will be prepared and signed by the responsible official of the office of jurisdiction (par. 18.23). In Adjudication this will be the designee of the Adjudication Officer.

(2) Certifications should include citation of only the question(s) at issue. In cases in which service connection has been denied for a number of conditions, and the contention of the claimant is that service connection is warranted for only one, certification should be made only as to the condition claimed to be due to service. When a hearing before the BVA has been requested by the claimant or a Member of Congress, a notation of that fact will be indicated under "Remarks."

(3) When, after having been furnished a supplemental statement of the case, the claimant enlarges the appeal to include additional issues, the appeal will be certified to the BVA on the issues previously considered provided VA Form 1-8 clearly shows action on the additional issues is deferred. Upon completion of appellate consideration on the issues certified, a supplemental statement of the case on the additional issues raised will be furnished the claimant and a period of 30 days allowed for response as provided in paragraph 18.10.

b. **Factors To Be Considered in Preparation of VA Form 1-8.** The form should not be signed until:

(1) The question or questions involved in the appeal are accurately determined.

(2) An opportunity to make a personal appearance has been accorded, if requested, and a complete transcript of the record, when a hearing has been held, is in file.

best copy available

(3) A completed VA Form 1-646 is of record (as required by par. 18.19) when there is a valid appointment of an accredited service organization, or, if the form has not been executed, the fact that the representative has been given an opportunity to make presentation in support of the appeal is shown by correspondence in file or notation on VA Form 1-8.

(4) A statement of the case has been furnished.

c. **Notice to Appellant of Certification.** FL 1-26 will be used to advise the claimant that the appeal has been certified to the BVA. Copies of the form letter will be prepared for the accredited representative and other interested persons, if any. If a hearing before the BVA has been requested, this statement will be added: "You will be advised by the Board concerning your request for a hearing."

d. **Processing Certification.** After VA Form 1-8 has been signed by the designee of the Adjudication Officer and all correspondence released, the claims folder will be routed for updating VA Forms 20-8772 and 20-8773 [ ] (M23-1, pt. I, [ ], par. [7.09b(2)(a)]). [(For BVA automatic folder callup, see M23-1, pt. I, pars. 7.08 and 7.09b(1)(d).)]

18.25 DEFERRED CERTIFICATION

a. **Severance of Service Connection Under VAR 1105(D).** A proposed rating under the provisions of VAR 1105(D) is merely a preliminary action and consequently is not an appealable determination as contemplated by VA Regulation 9800 series. However, if a notice of disagreement is filed in such case before the expiration of the 60-day period, a copy of the statement of the case should be prepared and furnished the claimant together with advice that should they have no further evidence to submit and desire to appeal before the end of the 60-day period allowed for submission of evidence, they may and the appeal processed.

(1) Certification of the appeal, if initiated, should not be made until the contemplated rating action has been accomplished.

(2) The effective date of reduction or discontinuance of compensation, however, will be in accordance with VAR 1500(R).

b. **Reduction Under VAR 1105(E).** Although rating actions under VAR 1105(E) do not become final until expiration of the 60-day notice period, a statement of the case should be prepared and copy furnished prior to expiration of the 60-day period when it appears that the claimant does not have additional evidence to furnish and has furnished a notice of disagreement. (Also see par. 52.10.)

c. **Other Cases.** In any case in which final action is delayed to permit the submission of additional evidence, certification of an appeal will not be made until the expiration of the time extended for submission of the evidence. (See par. 18.05c.)

18.26 FORWARDING OF [ ] CLAIMS FOLDER TO THE BVA

Consideration of appeals involves study of all evidence available relating to the issue presented. The claims folder and all other pertinent records (see par. 18.05) in the custody of the originating office pertaining to the issue requiring consideration on appellate review will be forwarded to the BVA immediately upon receipt of certification and authorization for transfer. In claims under 38 U.S.C. 351, the complete original medical, surgical and hospital clinical records will be included. [(For BVA automatic folder callup, see M23-1, pt. I, pars. 7.08 and 7.09b(1)(d).)]

18.27 EVIDENCE RECEIVED AFTER CERTIFICATION

a. **Evidence Received Prior to Transfer of Case to BVA.** If evidence is received after an appeal has been certified, but before the folder is transferred, action will be taken to determine whether any change in the status of the claim is in order.

b. **Evidence Received After Transfer of Case to BVA.** Additional evidence received after the claims folder has been transferred should be forwarded to the BVA if it has a direct bearing on an issue before the BVA. Otherwise it will be filed

in the temporary folder pending return of the claims folder unless action unrelated to the appeal is required and may be taken without waiting for return of the case by BVA. In urgent situations, information from the case file may be obtained by telephone contact and/or temporary return may be requested.

18.28 APPELLATE DECISIONS AND REMANDED CASES

a. Return of Case From BVA. When a decision has been [made] by the BVA, the folder will be returned to the office of jurisdiction [and routed through the unit clerk for VARMS update.]

b. Routing of Reversals and Remands. If the appellate decision reverses or remands a case for further development by the Adjudication Division, the claims folder will be referred to the rating board or Authorization [activity] as appropriate for review and necessary action.

c. Routing of Affirmed Decisions. If the appellate decision affirms the disallowance, the claims folder will be referred to the Adjudication Division for review and any action that may be required.

d. Control of Remands

(1) General. In remanded cases, a 4-month suspense is established by the BVA and a 6-month diary is attached to the case when returned to the regional office. Control of remanded appeals will be maintained in accordance with M23-1, part I, [ ] paragraph [7.09b(2)(d).] The claims folder will be referred to the rating board or Authorization, as appropriate, for necessary development or other action required. The BVA will follow up [on] remanded cases at the end of the 6-month suspense period unless the case has been returned to the Board within the suspense period or the Board has been advised that the appeal has been satisfied by the allowance of each appealed issue. It is the responsibility of the Adjudication Officer to advise the BVA when:

(a) A remaneded appeal is withdrawn by reason of allowance of all the benefits sought, or

(b) Remand action is not or cannot be completed within the 6-month suspense period.

(2) Appeal Withdrawn. If the substantive appeal is subsequently withdrawn (see pars. 18.20 and 18.21a), VA Forms [20-8772 and 20-8773] will be disposed of as provided in paragraph 18.06d. [ ]

(3) Review by Service Organization. Prior to recertification of a remanded case, except when remand is for assembly of records (par. 18.19b(5)) the representative of a service organization holding power of attorney will be given an opportunity to review the case. The procedure provided in paragraph 18.19 will be followed except that readiness for appellate review may be shown by annotation on the VA Form 1-646 previously executed or by memorandum or letter for file in lieu of executing a new form.

(4) Transfer of Records for Independent Medical Expert Requests. When records are received from the BVA for delivery to a medical school for review by a specialist, a control should be maintained and a representative of the VA facility should personally deliver and pick up the records from the institution.

e. Recertification—Evidence Received. When the additional evidence requested by the remand has been received, the agency of original jurisdiction will carefully review the entire record. When the benefit sought cannot be granted, a supplemental statement of the case will be mailed to the claimant and representative with a period of 30 days allowed before recertification in which to supplement the original substantive appeal. At the expiration of such period, the certification of appeal form filed in the inside left flap of the folder will be noted in the "Remarks" block as indicated below and signed by the person who originally certified the appeal or in his/her absence by a person designated to make such certification.

"Determination of _____(Insert date shown in "Date" block.)_____
confirmed.

_____Date_____ _____(Signature and Title)_____"

f. **Recertification—Evidence Not Submitted.** When, in a remanded case, the appellant has not submitted evidence requested within 60 days from the date of request, the claims folder will be forwarded to the BVA, with VA Form 3230 annotated as follows:

> "The appellant (and his/her representative) has failed to submit evidence requested in BVA remand within the prescribed period, and the attached claims folder is returned for appellate consideration on the basis of the evidence of record."

g. **Finality of Decisions.** For administrative purposes, the BVA's determinations are final in claims for benefits other than insurance, except for the correction of error therein or when, in the opinion of the board, a contrary conclusion is justified on the basis of official information furnished by the service department. When a claim has been finally disallowed by the board, a subsequent claim on the same factual basis, if supported by *new and material evidence,* will have the attributes of a new claim.

18.29 EFFECTIVE DATES OF GRANTS OF BENEFITS BASED ON BVA REVERSAL OF PRIOR DECISION

The effective date of an award based on a Board of Veterans Appeals decision reversing a prior BVA decision will be determined as follows:

a. **Vacating of Prior BVA Decision.** When the allowance is based on a vacating or reversal of a prior BVA decision for obvious error or other reason, the effective date of benefits will be the date from which benefits would have been payable if the corrected decision had been made on the date of the decision being reversed.

b. **Difference of Opinion.** When the allowance is based on a difference of opinion, the effective date of benefits will be (see also VAR 1400(H)):

(1) The date of receipt of request by the claimant for reconsideration or the date entitlement arose, whichever is later.

(2) The date of favorable decision by the Board of Veterans Appeals when reconsideration is afforded solely on VA initiative.

c. **Receipt of Service Records Not Previously Considered.** When new or additional service records are received, not previously considered, resulting in a grant or increase in benefits, the effective date of the award will be the same as if such records were considered in conjunction with the original claim (VAR 1400(Q)(2)).

18.30 APPEALS PENDING AT DEATH OR INITIATED AFTER DEATH OF APPELLANT VETERAN

a. **Appeals Pending Before BVA.** Under certain circumstances and when a favorable decision may result in the payment of benefits, an appeal pending before the BVA at the time of the appellant's death may be completed without application from the survivors. The return of a case by the BVA without a decision does not indicate that a review has been undertaken or a denial is in order. The BVA should be notified immediately by telephone of the fact and date of death.

b. **Appeals Not Pending Before BVA.** If, at the death of the appellant, certification to the appellate agency has not been made or has been made but is awaiting call by such agency, the claim will be considered a pending claim, provided application for accrued benefits is filed timely.

(1) If a claim for accrued benefits is filed, review will be conducted by the rating or adjudicating agency of original jurisdiction, except as provided in subparagraph c below.

(2) If the prior decision is continued, the case will be developed within the limitations of 38 U.S.C. 3021, and certified to the BVA, without the necessity of the filing of a new appeal by the person or persons claiming accrued benefits (see also par. [37.03]).

c. **Administrative Appeals and Merged Appeals.** If, at the death of the claimant, there is pending an administrative appeal in which the claimant may or may not have joined, no review will be conducted by the rating or adjudicating agency of original jurisdiction, and the case will be certified to the BVA, provided application for accrued benefits is timely filed.

d. **Appeals Timely Initiated After Death in Regard to Disability Rating.** A claimant for death benefits may file a notice of disagreement to initiate an appeal from the determination of an agency of original jurisdiction on a veteran's claim for disability compensation or pension. Such notice of disagreement must be filed within the prescribed 1-year period from date of the mailing notice of the last disability rating action.

e. **Referral to Appeal Recording Activity.** When an appeal is closed, the file will be referred for recordation of the disposition of the appeal.

f. **Reversal on Appeal.** See paragraphs 37.03 and 57.05c.

[ ]

Veterans Administration
(Designation of VA office and location)

(Date)

(File number)
(Veteran's name)

STATEMENT OF THE CASE

IN THE APPEAL
OF

(INSERT NAME OF CLAIMANT)

FROM THE DECISION OF THE
VETERANS ADMINISTRATION

NOTICE TO APPELLANT:

This is not a decision on the appeal you have initiated. It is a "Statement of the Case" which the law requires us to furnish to help you in completing your appeal.

Please read the forwarding letter carefully as well as the instructions on the enclosed appeal form. These explain your appeal rights and tell you what you must do to complete your appeal.

A copy of this "Statement of the Case" has been furnished your representative:

ISSUE:

Service connection for cause of death

FL 1-25A, FEB 1980(R)

Statement of the Case—Continued

FILE NO.
NAME OF VETERAN

SUMMARY OF EVIDENCE AND ADJUDICATIVE ACTIONS [TAKEN]:

Service: June 15, 1941 to August 18, 1945 (Honorable)

Service connection for varicose veins evaluated at 30% from September 10, 1945, was in effect at date of death.

[11-20-80] Death certificate received showing that the veteran died on [10-16-80]. Cause of death shown as congestive heart failure due to renal failure from renal obstruction due to cancer of the prostate.

[1-16-81] Application for dependency and indemnity compensation or death pension received.

[2-6-81] A review of all service medical records and subsequent medical records revealed no evidence of complaints, treatment or diagnosis of the conditions which were the cause of death nor any condition which might have contributed to the veteran's death. Service connection for cause of death was denied by rating of this date.

[2-18-81] The claimant informed that service connection for cause of death was denied.

[3-23-81] Notice of disagreement received from the widow.

PERTINENT LAW: REGULATIONS: RATING SCHEDULE PROVISIONS:

To establish service connection for the cause of the veteran's death, the evidence must show that disability incurred in or aggravated by service either caused or contributed substantially or materially to the cause of death. (38 U.S.C. 410)

When a veteran served ninety (90) days or more during a period of war or after January 31, 1955, and congestive heart failure, renal failure and carcinoma of prostate becomes manifest to a degree of 10 percent (10%) within 1 year from date of termination of such service, such disease shall be presumed to have been incurred in service, even though there is no evidence of such disease during the period of service. This presumption is rebuttable by affirmative evidence to the contrary. (38 U.S.C. 312, 313, 337; 38 CFR 3.307)

When a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. A reasonable doubt means a substantial doubt and one within the range of probability as distinguished from speculation or remote possibility (38 CFR 3.102)

DECISION:

Service connection for cause of death is denied.

REASONS FOR DECISION:

The evidence of record shows that the veteran died from congestive heart failure, kidney disease and cancer of the prostate. Service medical records do not show any complaints or treatment or diagnosis of the same during active military service. The evidence of record fails to establish the manifestation of any chronic disease within the presumptive period cited above warranting service connection for cause of death. There is no etiological relationship shown between the veteran's service-connected varicose veins and the cause of death. In addition, varicose veins were not of such a progressive or debilitating nature that they [made] the veteran materially less capable of resisting the affects of the many diseases primarily causing his death and therefore cannot be said to have contributed materially and substantially to his death.

Submitted by:

Date:

Approved by:

Date:

NOTE: Only the original (for file) will reflect signatures.

Veterans Administration

(Designation of VA office and location) (date) (File Number) (Veteran's Name)

SUPPLEMENTAL STATEMENT OF THE CASE

IN THE APPEAL
OF

(Insert Name of Claimant)

FROM THE DECISION OF THE
VETERANS ADMINISTRATION

NOTICE TO APPELLANT:

This is not a decision on the appeal you have initiated. It is a "Supplemental Statement of the Case." It contains only essential changes or additions to the original "Statement of the Case."

Please read the forwarding letter carefully. This letter explains what you are to do with this "Supplemental Statement of the Case."

A copy of this "Supplemental Statement of the Case" has been furnished your representative.

DATE OF ORIGINAL "STATEMENT OF THE CASE":

DATE(S) OF ANY PRIOR "SUPPLEMENTAL STATEMENT(S) OF THE CASE":

ISSUE:

FL 1-28a, FEB 1980

CHAPTER 19. ADMINISTRATIVE REVIEWS AND OTHER SUBMISSIONS TO CENTRAL OFFICE

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CHAPTER 19. ADMINISTRATIVE REVIEWS AND OTHER SUBMISSIONS TO CENTRAL OFFICE

19.01 GENERAL POLICY

a. Appeal to the BVA (Board of Veterans Appeals) is the normal channel for all cases involving question or dissatisfaction concerning rating or authorization action (see ch. 18). Central Office review of individual cases will [generally] be limited to the types of cases specified below which appear to involve problems of policy or administration:

(1) All matters of policy and procedure for which advice is desired, particularly those which are of more than local importance.

(2) All questions or cases in which there is doubt concerning the application or applicability of any provision of the regulations, the rating schedule, instructions, interpretations, or precedents.

(3) Cases in which there is doubt as to the propriety of allowing service connection (other than a question of evaluation of evidence) or when the provisions of the rating schedule are considered inadequate for proper evaluation. These cases will be immediately referred to Central Office [(214D)] with appropriate recommendation.

(4) All cases in which proposed rating or authorization action involves differences of opinion regarding a prior rating or other action on the same factual basis [(38 CFR 3.105(b). (See par. 19.05 and 46.09).]

(5) Cases requested by Central Office.

[(6) Ratings under 38 CFR 3.105(a) granting retroactive monetary benefits for more than 5 years. (See par. 46.10b)]

b. When a letter, advisory opinion or decision of a Central Office element, including decisions of the BVA, is received which appears to be at variance with prior decision, instructions or guideline material contained in letters or general issues, or which is considered to be of general interest or value to other field stations, it should be brought to the attention of Central Office (21) by letter specifically setting forth the item of apparent interest or variance.

(1) This is not intended to include cases which involve mere differences of interpretation of factual situations, nor is it intended that there be any delay in the required implementation of the decision.

(2) In the occasional instances when only clarification of a decision of the BVA may be desired, the claims folder should be forwarded to the Chairman of the BVA by cover letter identifying the specific matter in which clarification is needed.

19.02 DISTINCTION BETWEEN ADVISORY OPINION—ADMINISTRATIVE REVIEW—ADMINISTRATIVE APPEAL—DIFFERENCE OF OPINION UNDER [38 CFR 3.105(b)]

A request for advice from Central Office may be initiated by or with the concurrence of the Adjudication Officer at any point in the processing of a claim, providing such action is consistent with appropriate procedure. Nothing herein is intended to limit accessibility of such advice; however, a question that might be a proper basis for requesting an *advisory opinion* before an authorization action or a rating decision, may not be a proper subject for submission for *administrative review* after a formal decision has been made. After a formal decision, resolution of divergent opinion as to the conclusions justified by the facts is an administrative appeal, unless there are problems of policy or administration over and above those presented by the pros and cons of the particular determination in the individual claim. Consultation and discussion among the personnel concerned as to the true issues in a case may avoid unnecessary or improper submissions, if the following distinctions are carefully observed:

[a. **Advisory Opinion.** An advisory opinion provides a source of consistent, reasonable guidance and advice in the consideration of complex or unusual cases. While not directive in nature, an advisory opinion should be considered along with all the evidence, and be given significant weight in the final adjudication of a claim. An advisory opinion should be requested by the regional office prior to a formal decision on the point in question and may properly be requested when there is doubt as to the correct application of rating or other principles or policies or when obscure or complicated medical or legal problems are involved. (See par. 19.03.)]

[b. **Administrative Review.** An administrative review involves a review of decisions already made. This differs from an advisory opinion in that the decision is directive in nature, and, as such, is binding on regional office decision makers. An administrative review is not a redetermination of facts and should be confined to situations involving policy or procedure of more than local significance or a question of inadequacy or misapplication of the regulations or instructions. Administrative review should not be requested when such action would have the effect of merely affording an additional step in deciding the claim on its merits. (See par. 19.04.)

c. **Administrative Appeal To BVA.** A decision resulting from an administrative appeal is also directive in nature. Administrative appeal may properly be taken in regard to a completed decision by Directors and/or Adjudication Officers (38 CFR 19.139) when, after complete discussion among all personnel concerned, there is agreement as to the applicable principles and policies or interpretation thereof, but there remains a divergence of opinion as to the conclusions justified by the facts in a particular case. (See pars. 18.15 and 45.06.)]

d. **Difference of Opinion Under [38 CFR 3.105(b).]** A request [by a regional office] for an administrative determination on a difference of opinion under [38 CFR 3.105(b)] is in order whenever the responsible rating or authorization element is of the opinion that a revision or amendment of a previous decision is warranted based on a difference of opinion rather than a finding of clear and unmistakable error. (See par. 19.05.)

19.03 REQUESTS FOR ADVISORY OPINIONS

Requests for advisory opinions pertaining to individual claims will be forwarded securely fastened to the outside front cover of the folder, to Central Office [214D]. In addition to the Adjudication Officer's recommendation or comments on the question(s) presented, a request for advisory opinion should contain:

a. **Information.** A brief but complete statement of pertinent service information regarding the veteran and/or identifying data as to the claimant(s) and the type of claim involved.

b. Facts pertinent to the question(s) at issue.

c. Discussion of the facts and laws, regulations, and/or procedures involved.

d. Question(s) at Issue

(1) Each question should be a clear, concise inquiry involving only one issue and should avoid stating multiple issues in one question.

(2) If there is more than one question, each should be numbered.

19.04 REQUESTS FOR ADMINISTRATIVE REVIEW

a. **Referral of Request.** On motion of the field station or Central Office, [ ], the folder in an individual claim will be transferred for administrative review to Central Office [214D]. When the transfer is originated at the field station, the letter accompanying the folder [shall] contain a comprehensive and detailed discussion of the unresolved questions on which the request for administrative review is based and the recommendation or comment of the Adjudication Officer on issue(s) presented.

[b. **Source of Non-VA request.** A request upon Central Office for administrative review may originate outside the VA. Such request may be received from local or national service organizations, attorneys, agents, or other accredited representatives. Initiation of administrative review will be considered only if such request includes a full statement of reasons for such review. The statement should identify the provisions of the rating schedule, regulations, instructions, precedents, etc., which have not been properly applied or have been misinterpreted.

(1) The request of local service departments of those organizations having national representation must be made through their national headquarters. (Also see par. 19.07.)]

[(2) The local representatives of service organizations not having national representation as well as attorneys, agents, or other accredited representatives, may request the Director, Compensation and Pension Service, DVB, to call a claims folder to Central Office for administrative review.

(3) Central Office may reject a request for administrative review if such request is inconsistent with paragraph 19.01a, or such action would have the effect of merely affording an additional intermediate step in the appeals process. (See pars. 19.01a and 19.02b.)]

19.05 REQUESTS FOR ADMINISTRATIVE DETERMINATIONS ON DIFFERENCE OF OPINION [38 CFR 3.105(b).]

a. When a rating or authorization issue is submitted to Central Office on the basis of difference of opinion under [38 CFR 3.105(b)], the entire file will be forwarded to [214D], accompanied by a memorandum or letter furnishing a complete and comprehensive statement of facts in the case and a detailed explanation of the matters supporting the conclusion that a revision or amendment of the prior decision is in order.

[b. Pending resolution of the issue, the decision will not be promulgated. After Central Office renders a decision on the issue under review, notify the claimant of the decision and furnish appellate rights. Regardless of the decision, an appeal may be made from a determination which resulted from the 38 CFR 3.105(b) review. If authorization or rating action is necessary, determine the effective date under 38 CFR 3.400(h).]

19.06 DIFFERENCE OF OPINION ON SUPERVISORY REVIEW

a. The Adjudication Officer is responsible for the quality of decisions in the Adjudication Division. In discharging that responsibility, he or she must be assured that the laws, regulations and instructions are clearly understood and uniformly applied. This requires that the Adjudication Officer and supervisory designees review a number of adjudicative actions, including, but not limited to those authorization actions and rating decisions identified for review under [ ] quality review procedures.

b. Errors and deficiencies disclosed by these reviews will be brought to the attention of the responsible personnel for appropriate corrective action. The Adjudication Officer's interpretations of laws, regulations and general policy are binding and controlling, and, except as to the substantive decisions of rating boards [or hearing, officers] in individual cases, are final, subject to appeal by the claimant.

(1) When the Adjudication Officer differs with the substantive decision of a rating board [or hearing officer,] explanation of his or her position and request for reconsideration should be made [ ] but change in the decision may not be directed. In the event the rating board [or hearing officer] after reconsideration adheres to [the] decision, the Adjudication Officer may seek administrative review (see par. 19.04) or take an administrative appeal to the BVA (see pars. 18.15 and 45.06) if appropriate.

[(2) Decisions rendered on administrative review or administrative appeal are directive in nature. They are binding on regional office decision makers, as they are reviews on completed adjudicative actions.]

19.07 CASES REQUESTED FOR STUDY. [ ] If a service organization holding power of attorney requests that a claims folder be made available for its study in Central Office or [any other] regional office, the VA will comply with the request.

[ ]

19.08 TRANSFER, RECALL AND RETURN OF CLAIMS FOLDER

See paragraph 2.09.

19.09 SUBMISSON TO CENTRAL OFFICE FOR LABORATORY ANALYSIS OF HANDWRITING, FINGERPRINTS, ETC.

When necessary, a claims folder may be transferred to Central Office, to the Inspector General, Office of Investigation (51), for examination, analysis, identification, and classification of handwriting, typewriting, questioned document, fingerprints, and other material subject to laboratory analysis. The folder will be accompanied by a letter stating the purpose of the request, identifying the documents involved and apparent discrepancies noted.

19.10 EQUITABLE RELIEF, 38 U.S.C. 210(c)

a. In order to apply the principles of equitable relief under 38 U.S.C. 210(c)(3)(A), the following factors are considered:

(1) That an erroneous determination as to eligibility for benefits was made by the VA.

(2) That an individual has acted to his or her detriment based on the erroneous determination.

(3) That the individual who has acted to his or her detriment was not aware that the determination of eligibility was made in error.

(4) The extent of the loss suffered by the individual and the remedy to be afforded.

b. Requests for equitable relief under 38 U.S.C. 210(c)(3)(A) by a claimant or third party must be referred to Central Office after [complete] development. The required development [must] include a detailed factual determination of the economic loss, injury, damage or disadvantage which the individual suffered and the extent to which such loss was due to reliance upon an erroneous determination of eligibility or entitlement.

c. Cases involving the Compensation and Pension program should be submitted to Central Office [214D.]

NOTE: As equitable relief may also be granted by the Administrator under 38 U.S.C. 210(c)(2) when there has been a failure to provide benefits by reason of administrative error, the application of that provision should be considered in certain unusual situations which do not fall under 38 U.S.C. 210(c)(3)(A).

CHAPTER 20. PENAL AND FORFEITURE DISCONTINUANCE PROVISIONS

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CHAPTER 20. [PENAL AND FORFEITURE DISCONTINUANCE PROVISIONS]

20.01 GENERAL

After September 1, 1959, forfeiture for fraud or treasonable acts may not be declared in other than a foreign case or where the act was committed in the Republic of the Philippines.

a. The term "foreign case" means one in which the person was not residing in a State as defined in VAR 1001(1) when the fraudulent or treasonable act or acts occurred, and those in which the person was residing in a State when the fraudulent or treasonable act or acts occurred but ceased to be a resident of or domiciled in a State before the expiration of the period during which criminal prosecution could be instituted.

b. There are no dual penalties of forfeiture of benefits and punishment under penal statutes for fraud or treasonable acts where the offense is committed at a place within the jurisdiction of a Federal court and the claimant remains within the jurisdiction of a "State" until expiration of the statute of limitations for prosecution.

c. In addition to the limited category of cases in which forfeiture may be declared for fraud or treasonable acts, forfeiture of gratuitous benefits in any case is automatic upon conviction for subversive activities specified in VAR 1903.

d. As used in this chapter, the title District Counsel also includes the Adjudication Officer in the regional office Manila, as he or she performs the District Counsel functions for forfeiture cases under jurisdiction of the Manila regional office.

20.02 AUTHORITY [AND ADJUDICATION]

a. **Forfeiture Submissions and Decisions.** As provided in VAR 1905, the District Counsel of the regional office has the responsibility of taking necessary preliminary action and submitting cases to Central Office (212A) when forfeiture of benefits is indicated under VARs 1901 through 1903. The Director, Compensation and Pension Service, and staff officials within that service designated by him or her make determinations as to whether benefits have been forfeited.

b. **Consideration for Prosecution.** The District Counsel of the regional office is also responsible for determining whether cases should be submitted under VAR 5560 to the U.S. attorney for possible prosecution when there is an apparent violation of penal statutes, and submission to Central Office for determination of forfeiture is precluded by VAR 1900(B)(2).

[c. **Employee Responsibility.** It is the responsibility of all personnel to be alert for indications of fraud in connection with the consideration of claims for benefits. Cases will be referred to the District Counsel for possible action when it appears that an individual knowingly made or caused to be made, or conspired, combined, aided or assisted in, agreed to, arranged for or in any way procured the making or presentation of false or fraudulent evidence pertaining to a material factor in any claim. Cases will not be referred on obviously trivial or immaterial issues. (See also par. 14.33.)

d. **Administrative Decision.** The Adjudication Division is charged with determining the credibility of evidence in claims for benefits within its jurisdiction. An approved memorandum decision will serve as a basis for determining eligibility for the particular benefit to which such evidence relates and will control action in the adjudication of the claim. This is true regardless of the District Counsel's decision to refer an applicable case to the U.S. attorney for prosecution or to Central Office (212A) for consideration of declaration of forfeiture.

e. **Referral to District Counsel.** The claims folder, with two copies of the approved memorandum decision, will be referred to the District Counsel for action deemed necessary by him or her. Control will be maintained on all cases so referred.]

20.03 FALSE OR FRAUDULENT EVIDENCE [FOR FORFEITURE CONSIDERATION]

[a.] **Development.** All necessary development will be completed. When sufficient evidence (including evidence developed by field examination, if required) is of record to establish the necessary probability that the evidence is false or fraudulent and is material to the question of eligibility for the particular benefit claimed, a proposed memorandum decision [ ] will be prepared by the adjudicator in triplicate in the format prescribed in paragraph 14.34. The decision will be prepared for concurrence by the authorizer (unit chief) and approval by the Adjudication Officer or his or her supervisory designee.

[b.] **Proposed Decision and Due Process.** The memorandum decision will record the circumstances, describe the evidence, set forth the specific acts alleged to be false or fraudulent, and show the effects of such evidence on the claim. The decision will include a recommendation which, upon approval of the Adjudication Officer or his or her supervisory designee, will govern adjudication of the claim after application of due process procedures below.

(1) When the proposed decision is made, the claimant will be notified as provided in VAR 1905 and advised of the effect of a declaration of forfeiture on benefits as provided in VAR 1500 (K) or (S) (1) or (2); VAR 1669 (B) (1) or (2), or (C), as applicable.

(2) No suspension or termination action will be taken at the time the predetermination notice is sent. Instead, authorization action will be deferred for a period of 60 days during which the claimant may submit additional evidence or request a hearing.

[c.] **Final Recommendation and Notice to Claimant.** At the end of the deferral period, a final recommendation decision will be made. Then, if forfeiture is still recommended, the claimant will be advised that the decision is based upon the evidence presented and that payments are suspended effective date of last payment (VAR 1669(A)). (See also par. 20.05b re nonsubmission for forfeiture decision.)

[ ]

20.04 TREASONABLE ACTS

When evidence in foreign cases establishes that a claimant might be guilty of a treasonable act specified in VAR 1902, the procedures specified in paragraph [20.03b] must be applied. At the end of the deferral period, a final recommendation decision will be made. Then, if forfeiture is still recommended, the case will be referred to the District Counsel by memorandum outlining the specific treasonable act or acts and specifying the evidence in file to support the allegations. Control will be maintained on all cases so referred to the District Counsel.

20.05 NOTICE FROM DISTRICT COUNSEL

a. **Submission.** When the District Counsel advises that a case is being submitted to Central Office for consideration of forfeiture under the circumstances outlined in VARs 1901 through 1903, or of the return of an indictment for any of the offenses set forth in VAR 1903, payments will be suspended effective date of last payment (VAR 1669(A)). In cases submitted under VAR 1901 because of fraud, payments may already have been discontinued and due process predetermination notice given under paragraph [20.03b,] in which case no further authorization action is required. The claims folder will be returned to the District Counsel for transmittal to Central Office.

b. **Nonsubmissions.** If the District Counsel determines that submission to Central Office or referral to the U.S. attorney is not warranted, [his/her] will return the case by memorandum setting forth the basis of [his/her] decision. When the case is referred to the District Counsel under paragraph 20.03, [fully inform] the claimant of the decision [ ] by the Adjudication Division and of his right to initiate an appeal. Should a notice of disagreement be timely filed, [handle] appeals [ ] in accordance with chapter 18.

20.06 NONFORFEITURE DETERMINATIONS

Upon return of a case from Central Office and information from the District Counsel that no forfeiture was declared, or upon receipt of notice from the District Counsel that the claimant was acquitted of subversive activities, [resume] payments [ ] from the date of last payment, if otherwise in order, in accordance with the provisions of [38 CFR 3.669].

20.07 JURISDICTION OF CLAIMS FOLDER IN FORFEITURE CASES

When forfeiture is invoked, those cases which are not in a terminated status will be referred to WRO for termination under [38 CFR 3.669] and then returned to Central Office. [The Manila regional office will terminate cases under their jurisdiction.] All folders will be maintained in Central Office until expiration of the appeal period or an appellate decision is rendered, after which the folders will be transferred to the regional office assigned jurisdiction under paragraph 2.02, where it will be maintained in a "locked file."

20.08 APPEALS FROM FORFEITURE DECISIONS

When [a] notice of disagreement is timely filed, [forward] the notice of disagreement and any material furnished therewith [ ] to Central Office [(214D)] for preparation of the statement of the case (par. 20.07).

20.09 APPORTIONMENTS

a. **Forfeiture Invoked Before September 2, 1959.** Apportionment awards may be made to dependents if otherwise entitled. [If] a veteran's right to disability compensation was forfeited before September 2, 1959, the death benefit limitation applicable to payments to a dependent will be the DIC rate. It is not necessary that a claim for the DIC rate be filed by the claimant. The basic rate of DIC is applicable to these cases, without development as to additional allowances under 38 U.S.C. 411(b) or 412.

b. **Forfeiture Invoked After September 1, 1959.** [If] forfeiture was declared after September 1, 1959, no apportionment award [may] be approved while the forfeiture decision remains in effect.

c. **Award Preparation**

(1) [Amend] the veteran's award [ ] and [make] a "Record Purpose" award (par. 15.30), under special law code 03, with a total withholding under type 1.

(2) [Prepare] the apportionee award [ ] as in the case of any other apportionee award. [Do not enter a] special law code [ ] on the apportionee award.

20.10 SUBSEQUENT SERVICE

Forfeiture of benefits based on one period of service does not affect entitlement to benefits based on a period of service beginning after the offense causing the prior forfeiture. [Process] such a claim [ ] on the basis of the subsequent nonforfeiture period of service only. [(38 CFR 3.900(a))]

20.11 PRESIDENTIAL PARDON

[The Department of Justice no longer accepts and processes petitions for pardon from applicants whose benefits have been forfeited administratively.]

20.12 DISALLOWANCE PENDING POSSIBLE FORFEITURE

See paragraph 16.08.

CHAPTER 23. DISABILITY AWARDS

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CHAPTER 23. DISABILITY AWARDS

23.01 SCOPE

This chapter encompasses the preparation and processing of VA Form 21-6798, Disability Award, and VA Form 21-6798s, Supplemental C&P Award Code Sheet (OCR), for use in cases of living veterans.

23.02 PREPARATION OF DISABILITY AWARDS—GENERAL

Instructions common to both disability and death awards not covered in this chapter will be found in chapter 15. Specific instructions will also be found in other chapters under the particular subject matter which they cover.

23.03 AID AND ATTENDANCE OR HOUSEBOUND CODE

a. **General.** Entry of the appropriate code in the item "Aid and Attendance or Housebound" on disability awards will be required only when authorizing an additional rate based on the established entitlement as provided below, or when such entitlement, previously authorized, is terminated by rating and/or authorization action. Generally, when the specific code entry had been made and [entered], it will not be necessary to repeat the code entry on any subsequent award action, unless a change in entitlement requires [entry] of a different code. EXCEPTION: For amended COMPUT awards in disability pension, the applicable A/A or H/B code, even though previously input and unchanged, must *always* be entered; otherwise an erroneous computation of the rate payable will result. These codes will be used when entitlement is established (or terminated) to:

(1) Aid and attendance allowance

(a) For the veteran in disability cases (see par. 24.15);

(b) For the veteran's spouse in disability compensation cases.

(2) The housebound rate for the veteran in disability pension and compensation cases (see par. 49.22b(5)).

b. **Applicable Codes**

(1) **Code 1—"Vet Hosp.—A/A Not Payable".** Veteran entitled to A/A is hospitalized and reduction is required under VAR 1552(B). This entry is required on amended awards authorizing the appropriate reduced rate. (See VAR 1552(A)(2) for excepted disabilities; also see par. 25.17b.)[(See VAR 1552 (K) and par. 25.19a(4) if effective date of entitlement to A/A is on or after the date of institutionalization)]

(a) **In Section 306 and Improved Pension cases,** this indicates the initial reduction in the total award to include the housebound rate instead of additional allowance for aid and attendance, with possible further reduction of the award under VAR 1551(C). (See par. 25.17b(3)(b).)

(b) **In Old Law pension cases,** this indicates reduction in the total award to the household rate subject to further reduction under VAR 1551(B). (See par. 25.10 re required control.)

(c) **In compensation cases,** this indicates the reduction in the total award to the housebound rate under 38 U.S.C. 314(s) or other appropriate hospitalized rate. (See par. 25.17b(4) re possible need for rating to change SMC code.)

(2) **Code 2—"Pay A/A".** Veteran is not hospitalized and, even when hospitalized, if the disabling condition is one excepted from reduction of the aid and attendance rate under VAR 1552(A)(2). Code 2 will also be applicable during the initial period of hospitalization prior to the effective date of reduction under the provisions of VAR 1552(B)(1) or (2).

(3) **Code 3—"VET. ENT. H/B (ONLY)."** Used only when there is a rating entitling the veteran to the housebound rate. (If the veteran is entitled to aid and attendance, but is being authorized the housebound rate because of hospitalization, code 1 will be applicable as provided above.)

(4) **Code 0—"ENTIT. TERM."** Entered on the award reducing benefits when either aid and attendance or housebound rate for the veteran is terminated or in disability compensation cases, aid and attendance for the spouse is terminated when the veteran was not entitled to either aid and attendance or the housebound rate. In two veteran Improved Pension cases, a "**0**" will be entered in this item only if this veteran has had his/her A&A or housebound terminated. If a spouse's SMP has been terminated, the entry would be made on his/her award as a veteran. (See subpar. (5) *NOTE* regarding Improved Pension cases.)

NOTE: When the termination of this additional entitlement is effective at a future date (VAR 1501(G)(2)), unless there are other earlier changes to be effectuated by this award action, the amended award's first award line will be as of the date this reduction is required, obviating any computer error message of incompatability of the rate with this code. (See par. 24.03.)

(5) **A/A for Spouse.** In disability compensation cases (see *NOTE* regarding Improved Pension cases) when the veteran's spouse is determined in need of aid and attendance as established by nursing home patient status or rating action, the codes for use will be as shown below.

NOTE: In veteran married to veteran Improved Pension cases in which both veterans have special monthly pension entitlements, separate awards for each veteran will be required, with the appropriate SMP code shown on each award. (See also par. 9.44c(2).)

(a) **Code 4 (A/A Only for Spouse.)** When the veteran is not entitled to either A/A or the housebound rate.

(b) **Code 5 (Veteran Hospitalized.)** When the veteran is also entitled to aid and attendance, *but* payments are authorized at a reduced rate under VAR 1552(A)(2) because the veteran is hospitalized. [(See VAR 1552(K) and par. 25.19a(4) if effective date of entitlement to A/A is on or after the date of institutionalization.)]

(c) **Code 6 (Pay A/A for Veterans and Spouse.)** When the veteran is also entitled to the aid and attendance allowance without reduction.

(d) **Code 7 (Veteran Entitled Only to Housebound Rate.)** When the veteran, by rating action, is entitled to the housebound rate only.

c. **Need for Rating Data (for [Entry])**

(1) **Compensation Cases**

(a) Aid and attendance and/or housebound information is required award *and* rating input data only in compensation cases. The rating data on VA Form 21-6796, Rating Decision, under "Special Monthly Compensation" and "Other Loss" codes must be examined to determine whether there is entitlement to aid and attendance which must be reflected by an A/A code entry on the award. SMC code 48, 49 or 50, reflecting entitlement to ly housebound benefits will *not* require entry of code 3 (housebound only) on the award.

(b) The entry in the "Aid and Attendance or Housebound" item on either VA Form 21-6798 or 21-6798s indicates only, as determined by the hospitalized status, whether the additional rate is payable.

(c) Therefore, in compensation cases, any amended award action *based on a rating* granting or terminating entitlement to aid and attendance or housebound rates must be processed with rating data. (See pars. 25.17b(4) and 49.22b(5).)

(2) **Pension Cases.** [If entitlement to the aid and attendance or housebound benefit is granted by rating action, enter the appropriate code in the SPECIAL MONTHLY PENSION field on the 301 screen (see par. 15.17). If aid and attendance is payable because of nursing home patient status (38 CFR 3.351(c)(2)), complete the appropriate fields on the 401 screen (see par. 15.23b).]

(3) **All Cases.** Awards discontinuing or resuming aid and attendance benefits solely because of hospitalization or termination of hospitalization at VA expense may be processed [using either the PT-A/H or PT-A/A code on the 403 screen], without need for rating input except as required in subparagraph (1) above for compensation cases. (See also pars. 25.17b(2) and 25.20.)

d. **Grant or Termination of Aid and Attendance or Housebound Rate During Hospitalization.** See paragraph 25.19.

23.04 NUMBER OF CHILDREN–SCHOOL–HELPLESS

Entries in this item will be made in the awards to veterans and apportionees, in accordance with general provisions in paragraph [15.35].

a. **Compensation Awards.** Entry will be required only when the combined degree is 30 percent or more, to reflect the number of school and/or helpless children under "this" award on account of whom additional compensation is allowed.

b. **Improved Pension Awards.** The entry in this item on the specific award will reflect the number of school and/or helpless children to or on account of whom increased pension is paid on this award.

c. **Section 306 Pension Awards.** Without regard to the income amount on which the veteran's pension award is based, the entry in this item on the specific award will reflect the number of school and/or helpless children, up to a combined total of three dependents, to or on account of whom increased pension is paid on "this" award. *(NOTE: This entry will be made without regard to the required "total" dependency code entry, upon which it has no effect.)*

d. **Old Law Pension Awards.** Without regard to the veteran's reported current or anticipated annual income or the total number of school or helpless children in the case, entry in this item on the specific award will reflect, by entry of "1," that there is at least one such child, when there is no spouse and the status a veteran with a dependent is determined by the existence of an established school or helpless child. (See also par. 23.0[illegible]c re dependency code entry.)

23.05 RECOUPMENT BALANCE

[Establish the total amount of readjustment pay, disability severance pay or tort award by entering the amount on the 401 screen during original, amended or reopened award processing. Once a recoupment balance is established in the master record, it cannot be changed by amended award action. If the recoupment balance must be changed, document the claims folder and send a routing slip to Finance requesting that the recoupment balance be changed. (See pars. 29.43, 29.56, 29.62, and 33.07.)]

23.06 DEPENDENCY CODES

a. **General**

(1) "Total" and "This" dependency code entries will be made on each award, in accordance with the provisions of paragraph 15.18, subject to the specific provisions of this paragraph.

(2) The veteran's *"total dependency"* status for the period covered on *each* award line must be shown including the required entry of the minimal code "00" (two zeros) for "veteran alone." Entry of *"This Dependency"* code will be required (on *each* award line) only when the award is apportioned.

b. **Compensation Awards**

(1) **Combined Degree Less Than 30 Percent**. Except when the award is apportioned, "00" (two zeros) will be entered for total dependency, because for any rate less than 30 percent, the only applicable dependency code is "00" (veteran only). However, if apportioned, even though no additional amount is payable on account of the apportionee the "Total" and "This" dependency entries will be required on the veteran's and apportionee's awards, as explained in subparagraph f below.

(2) **Combined Degree 30 Percent or More**. The "total" dependency code reflecting *ALL* the dependent(s) *in the case*, on account of whom *additional* compensation is *authorized* will be entered. If the veteran has no dependents, or if there are dependents, but no additional compensation is authorized by "that" award line (and there is no apportionment), entry of the total dependency code "00" is required.

c. **Old Law Pension Awards**. If the veteran has no dependents, "00" will be entered for total dependency code. No other dependency code will be required unless

(1) The existence of a dependent has been established; in which case, the entry will be "10" or "81," the minimal code necessary to justify the applicability of the higher income limitation, or

(2) When apportionment is made (as explained in subpar. f below).

d. **Section 306 Pension Awards**

(1) Only the established existence of the dependent(s) on account of whom the higher rate of pension is being authorized will be coded under "Total" dependency.

(2) Total dependency code entry of "00" is required if there are no dependents, (or) if no dependents have been established or, when the veteran's only dependent is a spouse, if there is an estrangement and the veteran is not reasonably contributing toward the spouse's support. (38 U.S.C. 521(b))

e. **Improved Pension Awards**

(1) Only the established existence of the dependent(s) on account of whom the maximum income limitation is computed and whose income has been considered will be coded under Total dependency.

(2) Total dependency code entry of "00" is required if there are no dependents, (or) if the veteran's only dependent is an estranged spouse or a child not in the veteran's custody and to whose support the veteran is not reasonably contributing.

f. **Apportioned Awards**. When the veteran's award is apportioned, the "total" dependency code entries on the veteran *and* apportionee award(s) will reflect all dependents included in the case, as the total dependency entries for each period involved for the corresponding award lines on the veteran's and each apportionee award must be the same. Dependency "this" award code entry, required on each award, will identify the person(s) for whom a share is authorized on the specific award line by *this* award. The "total" of the "this" code entries on all awards in the apportionment, for each corresponding award lines, must equate to the "total" dependency code for that award period.

Example No. 1: Veteran, spouse, mother and 2 children—compensation award

Payee No.	Paid, This Award	Total Dep	This Dep
00 (Veteran)	Veteran only	32	00
10 (Spouse)	Spouse and 1 child	32	11
11 (Child)	2d child only	32	81
60 (Mother)	Mother only	32	60

Example No. 2: Veteran, spouse, and 2 children—Section 306 Award

Payee No.	Paid, This Award	Total Dep	This Dep
00 (Veteran)	Veteran and 1 child	12	81
10 (Spouse)	Spouse and 1 child	12	11

Example No. 3: Veteran and 4 children—Improved Pension Award

Payee No.	Paid, This Award	Total Dep	This Dep
00 (Veteran)	Veteran only	84	00
11 (Child)	1 child	84	81
12 (Child)	1 child	84	81
13 (Child)	1 child	84	81
14 (Child)	1 child	84	81

23.07 COMPETENCY PAYMENT CODE

This item [reflects the competency status of the veteran, as shown on the rating decision, and except for competency payment code 1, indicates whether payment to an incompetent will be on a supervised direct basis or through a fiduciary. Entry in this item is required on all original and reopened disability awards and to effect a change to veteran competency payment code.] (See also pars. 49.15 and 54.01.) [The applicable VSO code is for use with competency payment codes 2 through 5.]

a. **Code 1, Competent or Not an Issue,** will be used [when a veteran's] competency was not a rating issue or, if [the veteran is] rated, [he/she is] found to be competent. Payment will be made direct.

b. **Code 2, Incompetent—Pay Fiduciary,** will be used [whenever a] veteran is rated incompetent by the rating board and [the VSO has certified that payment will be made to a fiduciary including a veteran's spouse under VAR 5057.]

c. **Code 3, Incompetent by Court—Pay Fiduciary,** will be used [ ] when[, although rated competent] there has been [a finding] of incompetency by a [court of jurisdiction *and* payment to a fiduciary has been certified by the VSO].

b. **Code 4, [Legal Disability—Pay Fiduciary],** will be used when [payment is to be made to a fiduciary in compliance with the VSO's certification, and the veteran has *not* been rated incompetent but is under legal disability by reason of court action.]

e. **Code 5, Incompetent—Pay Direct—[VSO] Supervised,** will be used [whenever the VSO certifies] direct payment to a veteran rated incompetent. (See par. 12.17.) [ ]

23.08 PROCESSING OF RATINGS WITH AWARDS IN DISABILITY CASES

a. **General.** Original and reopened awards to or for veterans must be processed with the data supplied in the rating decision. Amended veteran awards may be processed without accompanying rating data only if the award change is not

based on a change in current or future rating data (pars. 23.03c, 49.02 and 49.03). When the amended award action is required by or involves a current rating action, the date of the rating will be [annotated on the award print].

b. **Dummy Ratings.** Situations will arise, however, when the regulations and other directives require immediate award action to provide for payment without a current rating action.

(1) In order that the award transaction will be accepted and processed without an audit error message due to the inconsistency or absence of rating data, it will be "specially" referred to the Input activity for the preparation and simultaneous processing of a "dummy" rating supplying the required data (par. 49.02(a)(1)).

(2) Quite frequently, reopened awards will require "dummy" ratings to reintroduce the rating data previously furnished with the terminated award, especially for reinstatement of payments in pension cases: Dummy ratings will also be required in the following typical situations:

(a) Reduction of an award to the prehospital rate upon the veteran's discharge from the hospital (par. 25.24).

(b) Medal of Honor special pension being awarded as the sole benefit (par. 24.10b).

(c) Adjustment to rate for static disabilities for failure to report for physical examination (par. 24.08c).

(d) Pension award to veteran age 65 or older when entitlement is based solely on attained age (par. 49.18b).

c. **Retroactive Awards Creating Overpayments.** Disability rating data for a retroactive period which is *entirely* in the past will *NOT* be [entered] with any amended award, nor with a reopened award processed with current rating data.

d. **Future Rating Data.** Awards to be processed with a rating change effective at a future data must supply the current rating data *with* the required *future* data by use of VA Form 24-6399 prepared in the Input activity (par. 49.22b(3)).

23.09 RECORD PURPOSE AWARDS

When entitlement has been established, but the veteran is not currently entitled to receive payment and an award on his or her behalf will be deferred, if an award is to be made to a dependent, a record purpose veteran (payee 00) will be required to support the award to the dependent.

a. This record purpose award will occur, for example, when payments to a veteran are deferred pending appointment of a fiduciary or when the only payments will be under an apportionee award because of a forfeiture decision against the veteran (par. 20.09), disappearance (par. 24.09), incarceration (par. 24.07), hospitalization status of incompetent veteran (pars. 28.08 and 28.17), etc.

b. The record purpose award will be prepared and processed as provided in paragraph [15.10]. (See also par. 28.07 re institutional award under payee 99.)

23.10 CASE INVOLVING VOCATIONAL REHABILITATION, EDUCATION, AND TRAINING (38 U.S.C. CH. 31)

a. Claims Folder Flash (VA Form 22-6564). Each case in which the veteran is in training under 38 U.S.C. ch. 31 will be identified by use of VA Form 22-6564, Claims Folder Flash—Vocational Rehabilitation Trainee, filed on the left flap (award section) of the claims folder in such manner that it will always appear as the top document (see par. 1.09e). When the veteran is authorized an employment adjustment allowance or has been placed in a discontinued status, the VA Form 22-6564 will not be removed, but will be annotated to show the specific action, date of the discontinuance or completion of the authorized program, and the total entitlement used for all periods of chapter 31 training prior to the discontinuance or completion.

[NOTE: Whenever there is a change in the evaluation for any service-connected condition, update the diagnostic information and percentages on the M33 screen.]

b. Simultaneous Review of C and R&E Folders. In any case identified by VA Form 22-6564, other than rehabilitated or discontinued cases, the R&E folder will be obtained for review and necessary action, including release of a copy of any new rating sheet to the VR&C (Vocational Rehabilitation and Counseling) Division in the following instances:

(1) **Changes in Disability Entitlement—General.** Any action increasing, reducing or discontinuing disability compensation to the veteran.

(2) **Action Required in Paragraph 29 and in Certain Paragraph 30 Cases.** A veteran in receipt of subsistence allowance (or crossover ch. 30 benefits) is entitled to a temporary total evaluation under paragraph 29 or a paragraph 30 rating covers any period of hospitalization, the case will be referred to a vocational rehabilitation specialist for immediate preparation of the authorization form (VA Form 28-1905[, Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status]) adjusting the subsistence allowance or crossover chapter 30 benefits effective the date of increase to the temporary 100 percent rate (38 U.S.C. 1508(b)). The compensation award and the chapter 31 award will be processed concurrently. Upon discharge from hospitalization, whether or not posthospital convalescence is indicated, the case will again be referred to the vocational rehabilitation specialist for reestablishment of the subsistence allowance or crossover chapter 30 benefits.

(3) **Action Required in Certain Instances of Reduction to 0 Percent.** Disability compensation being paid to a veteran previously determined eligible for vocational rehabilitation under 38 U.S.C. chapter 31 has been suspended or stopped by reason of failure to report for physical examination, the veteran subsequently reports, and his or her disability is found to be not disabling to a compensable degree. (See also par. 49.06a(1) concerning referral of a copy of the rating.)

(4) **Action Required for Dependency Changes.** The veteran is in training under 38 U.S.C. chapter 31, and notice is received of any change in the veteran's dependency status.

(5) **Individual Unemployability.** An initial claim for individual unemployability is either approved or denied.

c. Notification of Potential Eligibility for Vocational Rehabilitation

(1) General. Veterans will be informed of the availability and purpose of vocational rehabilitation and furnished VA Form 28-1900, Disabled Veterans Application for Vocational Rehabilitation, when there is potential eligibility under 38 U.S.C. 1503(a), (b) or (c) based on World War II or later service:

(a) When a rating results in an initial or increased grant of disability compensation (other than a temporary rating under par. 29 or 30 of the rating schedule), or

(b) When a rating results in service connection for an additional compensable disability or an increased evaluation for an existing service-connected disability, even though there is no change in the combined evaluation, or

(c) When DD Form 214, Certificate of Release or Discharge From Active Duty, is received showing that the veteran has been retired from the Armed Forces because of a disability.

[NOTE: Notice will be sent to all service-disabled veterans listed in subparagraph (1)(a) and (b) above, except veterans who are currently receiving assistance under chapter 31 and veterans with disability ratings less than 30 percent who have been rehabilitated to the point of employability.

(2) **Notice Release by Authorization Activity.** The application (VA Form 28-1900) will be furnished with VA Form 28-8890[, Important Information About Vocational Rehabilitation Benefits (Attachment to VA Form 28-1900)] under the conditions specified in subparagraph (1) above, enclosed with the disability award letter or other notice of disability rating. [If Target can be used to generate an award letter,] entry in the SPECIAL LETTER ATTACHMENTS field on screen 501 will be used for this purpose. [Since a dictated letter or pattern letter is required when all benefits sought are not granted, it will be necessary to attach FL 28-339 and VA Form 28-1900.]

(3) **Control for Motivation Contact.** A future diary control will be required when notice is sent under subparagraph (2) above.

(a) The future date control will be established for a 30-day period via the Target 501 screen under end product 707, using reason code 30.

(b) Local control will be used in those cases in which Target control cannot be used.

(c) If a completed VA Form 28-1900 is submitted prior to the control date, the control will be canceled.

(4) **Action by VR&C.** Upon receipt of the control document, VR&C will initiate motivation activity. Claims folders will be requested by VR&C staff as necessary.

(a) VR&C staff will determine whether the veteran should be visited directly or should be contacted by telephone or personal letter.

(b) The VR&C Division will establish an outreach record in each case. When VR&C has completed its outreach efforts, the original of the outreach record will be placed in the claims folder.

(5) **Action Upon Receipt of VA Form 28-1900**

(a) If the veteran's disability has already been rated service connected and compensable, the application will be processed for referral to the VR&C Division in accordance with M28-2, part II, paragraph 1.05a.

(b) If a veteran has a compensable service-connected condition, but the VR&C Division will not receive the processed application within 5 workdays, "fast copy" procedures will be followed:

1. The application will be photocopied;

2. The copy will be designated at the bottom "Fast Copy" and forwarded to VR&C with a copy of both the latest rating and the veteran's DD Form 214; and

3. After the original VA Form 28-1900 is annotated at the bottom "Duplicate was sent to VR&C on (date)" Adjudication processing of the application will continue.

NOTE: The "fast copy" procedure should be employed as a temporary measure when periodic processing delays are incurred and will not be substituted for normal handling procedures for any extended length of time.

(c) For actions requiring memorandum ratings, see paragraph 47.05 and M28-2, part II, paragraph 1.03a(3)(b)1.

CHAPTER 23. DISABILITY AWARDS

SUBCHAPTER III. SPECIAL ISSUE RATINGS

23.26 SPECIAL ISSUE RATING SYSTEM

a. **General.** The SIRS (Special Issue Rating System) is a computerized data collection system on rating issues of special interest to the Agency or to Congress. Rating data processed through SIRS (via the SR1 and SR2 Screens) creates a SIRS master record for the veteran concerned. This master record is available both for inquiry and for updating on the basis of subsequent rating decisions. The initial SIRS master records were established using data from special issue rating decisions forwarded to Central Office for review before establishing the SIRS.

b. **Timeliness in Reporting.** Process SIRS information from 301 rating screen data available from the PIF (Pending Issue File) after GAP (Generate and Print) but before CAUT (Claims Authorization). SIRS was designed to obtain as much data as possible from information previously stored in the Target System. The SIRS screens, when accessed, appear with varying amounts of information displayed, depending upon when the request is made. The system first attempts to find an established SIRS master record for display because it would generally contain a lot of information and not require much key entry. If a SIRS master record had not been established, the system would then search for 301 rating screen data that had been entered. If that search was also unsuccessful, then only the information on the ready screen would appear on the SR 1 screen and all pertinent rating data must be entered.

c. **General Processing Criteria.** The procedures differ depending on the source of the information displayed on the SR1 or SR2 screen. There are three sources: the rating information from the PIF; the SIRS master record; or the information from the Ready screen.

(1) SIRS information displayed on the SR1 and SR2 screens is from a SIRS master record that was previously established. Normally, the only fields on the SR1 screen that need to be entered are the date of claim and the rating date. To proceed to the SR2 screen, enter a "Y" in the update field before hitting ENTER. The SR2 screen will display the service-connected and nonservice-connected diagnostic information and the special issue that was previously established. The entry in each field can be changed or deleted to reflect the new rating decision.

(2) The pending issue information displayed on SR1 and SR2 screens is protected. If there are any errors found in that information, correct them through update of the 301 rating screen. If no errors are detected, enter "Y" in the update field and hit ENTER to proceed to the SR2 screen. The SR2 screen displays the diagnostic codes entered on the 301 Rating screen. Use of this screen is to fill in the blanks. For example, enter the most current effective date for each service-connected diagnostic code displayed. Also, enter all service-connected and/or nonservice-connected diagnostic codes in the rating decision that are not displayed on the screen.

(3) To establish a SIRS master record from only Ready screen information, enter each item present on the rating decision. The same edits that apply to the 301 Rating screen are enforced. Screen messages and field highlighting aid the operator in completing information for a SIRS master record.

23.27 IDENTIFICATION OF SPECIFIC SPECIAL ISSUE RATINGS

a. **General.** There are currently seven categories of special issue ratings and each requires a positive numeric and/or alphabetic entry in the appropriate file identifier field of the SR2 screen. In some cases the entries identify subgroups within a major classification.

b. **AO (Agent Orange).** If a claim involves alleged exposure to Agent Orange, there are five subgroups which must be identified to reflect the category of disability claimed. Enter the appropriate code from the chart below in the file identifier field labeled AO.

Category of Agent Orange Claim	Code
Agent Orange—General Claims	1
Interim Benefits paid for Chloracne and/or Porphyria Cutanea Tarda	2
Compensation paid for Chloracne	3
Compensation paid for Porphyria Cutanea Tarda	4
Compensation paid for any Soft Tissue Sarcoma	5

c. **POW (Prisoner of War).** If a claim involves prisoner of war status, regardless of the length of internment, there are six subgroups which must be identified by theater of internment. Enter the appropriate code from the chart below in the file identifier field labeled POW.

Theater of Internment	Code
World War I	1
World War II (Asian Theater)	2
World War II (European Theater)	3
Korea	4
Vietnam	5
Peacetime	6

d. **Radiation.** If a claim involves alleged exposure to radiation, there are four subgroups which must be identified by the source of the radiation. Enter the appropriate code from the chart below in the file identifier field labeled RAD.

Source of Radiation	Code
Atmospheric Nuclear Testing	1
Occupational or Therapeutic	2
Occupation Forces at Hiroshima or Nagasaki	3
Other	4

e. **Asbestos.** If a claim involves alleged exposure to asbestos, enter the number 1 in the file identifier field labeled ASB. There are no subgroups in this category.

f. **PTSD (Post-Traumatic Stress Disorder).** If a veteran claims that he/she has PTSD, the status of the claim must be monitored as well as the organizational elements which were involved in approving or disapproving benefit payments. The SIRS master record must be updated whenever a decision involving a PTSD issue is received from the BVA (Board of Veterans Appeals), even if rating action is not required. Enter the appropriate codes from the charts below in the file identifier field labeled PTSD.

Organizational Element Involved in Decision	First Position of Code
RO decision based on evidence from veteran or medical records.	1
Decision based on review by the Board of Veterans Appeals.	2
RO decision included development to the U.S. Army and Joint Services Environmental Support Group.	3
RO development included an opinion or evidence received from the VA Central Office Mental Health and Behavioral Sciences Service.	4

NOTE: The basic function of this code is to assess the complexities in adjudicating PTSD claims and to monitor the appeal referral rates. Each claim that is appealed or referred will be tracked to show the time spent at the BVA, at the Army Group, or at the Mental Health and Behavioral Sciences Service in Central Office. When the

decision, evidence, or opinion is received and regional office action is taken, update the code to reflect the disposition of the claim and the organizational element involved in the decision. Do not replace a code 2, 3, or 4 (as appropriate) with a code 1 during a given claim action. It is important that the code indicating the BVA's or another nonregional office group's involvement in the post-traumatic stress disorder decision not be overlaid by a code 1. If the veteran files a subsequent claim which is granted or denied locally (e.g., a claim for an increase), change the code to reflect the organizational element(s) involved in the subsequent claim.

Disposition of Claim	Second Position of Code
Service Connection Approved	A
Service Connection Denied	D
PTSD Claimed as Nonservice-connected Disability for Pension	D
Claim Appealed or Referred for Development or Opinion	R

NOTE: Code SIRS with an A (approved) in all claims in which the veteran has claimed PTSD and service connection is established for some other psychiatric condition or an increased evaluation is granted for a previously service-connected psychiatric condition.

PTSD Date — Enter the date on which each award, disallowance, or referral action is taken.

g. **AIDS (Acquired Immune Deficiency Syndrome).** If a claim involves alleged contraction of AIDS, enter the appropriate code from the chart below in the file identifier field labeled AIDS.

Disposition of Claim	Code
Service Connection–Approved	1A
Service Connection–Denied	1D
Nonservice-connected Pension–Approved	2A
Nonservice-connected Pension–Denied	2D

h. **MISC (Miscellaneous).** Use the miscellaneous identifier field in the future if a new special issue is established.

i. **Multiple Special Issues.** If a claim involves more than one special issue, such as a Vietnam POW claiming Agent Orange exposure, make appropriate code entries in each applicable file identifier field.

j. **RSN (Reason for Rating).** The reason for rating field is on the SR2 screen to identify the diagnostic codes for the disabilities claimed as due to the specified special issues. The special issue claimed is identified by the codes listed in 23.28d(3)(a)4. The field accepts a maximum of three such codes to cover situations in which more than one special issue is claimed as the cause of a disability.

23.28 SPECIAL ISSUE RATING SCREEN USE

a. **Access.** Only those individuals authorized (normally those who have CADJ (Claims Adjudication) or CDAT (Claims Data Entry)) will have access to the screen.

b. **Access Procedure.** To access the screen, enter the command "SIRS", the operator's password, the file number, the payee number and the stub name on the Ready screen.

c. **Sources.** The information on the SR1 screen can come from one of three sources. The following information messages are displayed to identify the source:

(1) "Pending Issue Displayed"—message displayed when the PIF is the source.

(2) "SIRS M/R Displayed"—message displayed when the SIRS master record is the source.

(3) "No PIF or SIRS M/R Exists"—message displayed when there is no PIF or SIRS master record.

d. **General Entry Requirement.** Enter each element on the rating decision for which a screen field occurs unless defined as optional in subparagraph (2) below. If a screen field is defined as "optional", it means only that SIRS processing can be accomplished if that field is blank. If the rating decision contains data for an "optional" field, input is mandatory. In some instances correction of faulty rating data on the 301 screen is necessary prior to SIRS input. Each element entered is edited to assure it is valid. If an entry is invalid, the field in error is highlighted and an error message is displayed. The entries are edited as follows:

(1) **General Edits.** Except if otherwise specified, all dates must be entered in one of the following formats: MM-DD-YY, MMDDYY, MM-D-YY, M-DD-YY, and M-D-YY. Verification of days of months and month is performed. For example, "02-30" (February 30) would be an invalid entry.

(2) SR1 Screen–Detailed Input Requirements

Data Element	Input Requirement
(a) File Number and Payee Number	None (Always displayed).
(b) Name	None (Always displayed).
(c) Update to establish or change a SIRS master record or to make an inquiry only.	Entry of "Y" or "N" required. If "Y" entered, the system will establish or change the SIRS master record. If "N" is entered, only inquiry will be permitted and no changes can be processed.
(d) Date of Claim	Entry required if blank.
(e) Date of Last Exam	Entry is optional.
(f) Date of Death	Entry is optional.
(g) Sex	Entry of "M" or "F" required if blank.
(h) Branch of Service	Entry required if blank.
(i) EOD	Entry required if blank.
(j) RAD	Entry required if blank.
(k) Additional Service	Entry is optional. Valid entries are: 1(WT), 2(PTE), or 3 (SCD).
(l) Date of Birth	Entry required if blank.
(m) Combat	Entry required if blank. Valid entries are 1 (None), 2 (Comp), 3 (Non-Comp) or 4 (Both).

Data Element	Input Requirement
(n) Employable	Entry is optional. Valid entries are: Y (Employable or not an issue) or N (Unemployable).
(o) Competent	Entry is optional. Valid entries are: Y (Competent or not an issue) or N (Incompetent)
(p) Future Exam	Entry is optional. Valid entries: MYY, M-YY, MM-YY, MMYY, or NONE. (An exception from par. 23.28d(1)).
(q) Other Controls	Entry is optional; however, an entry in one of the fields will require an entry in all three.
1. ACT (Action)	Valid entries are 1. (Established) or 2 (Cancel).
2. DATE (Month and Year)	See subparagraph (p) above for format.
3. Reason	Valid entries are: 1-4, 10-14, 20-22, 30 or 90-93. (See M21-1, appendix C.)
(r) Rating Date	Entry required if blank.
(s) RO Number	This field is protected. The regional office number will be changed when the record is updated by the new regional office of jurisdiction.
(t) Special Provision Code	Entry is optional. Valid entries are 1 through 7.
(u) Special Monthly Compensation	
1. SMC	Required entry if Hospital SMC present or entered. Valid entries are 00, 01-15, 18-22, 24-37, or 43-60.
2. LOSS (Loss of Use)	Required entry if SMC is 01, 02, or 14. Valid entries are 00, 11-13, 16-17, 21-19, 31-37, 41-46, 51-53, 61, 71-77, 81-87, or 91-97.
3. ANAT (Anatomical Loss)	Required entry if SMC is 01, 02, or 14. Valid entries are 00, 11-13, 21-27, 31-37, 41-46, 51-53, or 61.
4. OTH (Other Loss)	Required entry if SMC is 01, 02, or 14. Valid entries are 0-7.
5. HOSP SMC (Hospitalized)	Entry is optional. Valid entries are 00, 03-13, 15, 18-22, 24-35, 37, or 48-50.
(v) Next Screen	Valid entries are blank, SR2 or RES.

Data Element	Input Requirement
(3) SR2 Screen—Detailed Input Requirements:	
(a) Service Connected	Twenty diagnostic codes can be displayed or entered on the screen. If a diagnostic code is entered, a percent and effective date must also be entered. Additional diagnostic codes can be entered to the maximum number.
1. Diagnostic Code	Entry is required if present on the rating decision. Input will be validated by the diagnostic code table.
2. % (Percent)	Entry required if a diagnostic code is present. Valid inputs are, 0, 10, 20, 30, 40, 50, 60, 70, 80, 90, or 100.
3. Effective Date	Entry required if diagnostic code and percent are present.
4. RSN (Reason)	Valid reason codes that correspond to the special issue are as follows: **Special Issue Category — Code** Agent Orange — O POW — P Radiation — R AIDS — H Asbestos — A PTSD — S Up to three codes may be entered for a disability. Entry of the code is not required for each disability rated. However, at least one disability (either service connected or nonservice connected) must have a reason that is equivalent to the special issue.
5. Combined SC Degree	Entry required if a service-connected diagnostic code is present. Valid entries are 0-100 in increments of 10 only.
6. Combined SC Effective Date	Entry required if a service-connected diagnostic code is present. (See par. 23.28d (1).)
(b) Nonservice-connected	Same entries discussed in paragraph 23.28d (3)(a) above, except that no effective date or percentage is required.
1. Diagnostic Code	Same as paragraph 23.28d (3)(a)1.
2. % (Percent)	Same as paragraph 23.28d (3)(a) 1 except that entry is optional.

Data Element	Input Requirement
3. RSN (Reason)	See paragraph 23.28d (3)(a) 4 for instructions.
4. CDEG (Combined Nonservice-connected Degree)	Same as paragraph 23.28d (3)(a) 5 except that entry is optional.
5. PT (Pension) Effective Date	Entry is optional.
(c) Special Issue Ratings–File Identifier	An entry is required in at least one of the following fields. Enter each that applies.
1. Agent Orange	Valid entries are 1-5.
2. POW	Valid entries are 1-6.
3. Radiation	Valid entries are 1-4.
4. Asbestos	Valid entry is 1.
5. PTSD Code	Valid entry for first position is 1-4 and second position is A, D, or R.
6. PTSD Date	Entry of date required (MM-DD-YY) if PTSD code is entered
7. AIDS	Valid entry for first position is 1 or 2 and second position is A or D.
8. MISC	No entry is required at this time.
(d) Next Screen	Valid entries are blank, RES or SR2.

23.29 SIRS FOR CONFIRMED AND DEATH RATINGS

a. **Confirmed Ratings.** When a prior special issue rating decision is confirmed and there is no SIRS master record, extract the data necessary for completion of the SIRS screen from the last formal rating decision. If a SIRS master record is available for display, make appropriate updates. In either case enter the date of last exam (if present), the rating date and any future controls from the confirmed rating.

b. **Death Ratings.** Input to SIRS the appropriate data from any death ratings involving pertinent special issues. If a SIRS master record exists and the diagnostic code for the disability which caused the veteran's death is already in the master record, enter the date of death, the date of rating and the appropriate letter designation in the reason field to indicate the special issue claimed. Assign a 100 percent evaluation for the cause of death and the date of death as the effective date. If no SIRS master record exists, create one. It may be necessary to consult the rating board for the appropriate diagnostic code for the cause of death. In suicide cases use diagnostic code 9299 unless PTSD was determined to be the cause of death.

23.30 COPIES OF SIRS RATINGS

Prepare an extra copy of a rating for the Adjudication Officer whenever the veteran claims or the rating addresses issues including exposure to Agent Orange, radiation or asbestos, post-traumatic stress disorder,

prisoner of war status, AIDS, or any new special issues that are established. Maintain the copy in the Adjudication Officer's files for a period of 2 years. After that time it may be destroyed in accordance with Records Control Schedule VB-1, part I, item No. 13-052.200.

CHAPTER 24. SPECIFIC DISABILITY AWARDS AND RELATED ACTIONS

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CHAPTER 24. SPECIFIC DISABILITY AWARDS AND RELATED ACTIONS

NOTE: Detailed instructions for standard preparation of disability awards are provided in chapters 15 and 23. This chapter makes provisions for special procedures in specific cases. Definitions, etc., will also be found in other chapters.

24.01 AWARD OF GREATER BENEFIT

a. General. Where there is initial entitlement to VA benefits under more than one provision of law or regulations, the veteran may elect the benefit to be received. The claimant will be fully informed, by dictated letter regarding respective entitlements. ([38 CFR 3.70]) (See par. 29.03).

b. Assumption of Claimants' Election. See paragraph 29.04.

c. Award of Lesser Benefit Pending Determination of Entitlement to Greater Benefits. See paragraph [15.14.]

24.02 SEVERANCE OF SERVICE CONNECTION

a. General. [The rating board may originate] severance of service connection [ ] or the Authorization activity may initiate the action by reversal of a prior determination as to character of discharge, line of duty, or willful misconduct (ch. 14, subch. I) and refer the case to the rating board for appropriate action (par. 48.09). If the rating board finds that the previous grant of service connection was based upon clear and unmistakable error, rating action will be taken to propose severance of service connection in accordance with paragraph 48.04.

b. Notification to Veteran. After the Adjudication Officer's approval of a proposal to sever service connection (par. 48.02), [notify the veteran by dictated letter of the proposed severance, furnish detailed reasons for the action and inform him or her that we are providing a 60-day period in which to submit evidence to show that service connection should be continued (38 CFR 3.105(d)).]

NOTE: Under no circumstances will the veteran or service organization be informed of a contemplated severance prior to the Adjudication Officer's approval.

(1) When the evidence shows a probability of entitlement to disability pension on the basis of severity of disability, [inform] the veteran [ ] of this benefit at the time of notification [of the proposed severance.] [Request] any employment and income information considered necessary [ ] at that time.

(2) When severance of service connection is proposed for one or more disabilities, but remaining service-connected disabilities have increased in severity, [do not authorize a] temporary increase. [Notify] the veteran [ ] of the increased evaluation and the proposed severance and of any reduction which will result from [the severance] action.

(3) [Establish] control [ ] for final rating action at the expiration of the 60 days.

c. Notification to [Vocational Rehabilitation and Counseling] Activity and Medical Administration Service

(1) [Refer] a copy of the letter to the veteran [ ] to the [Vocational Rehabilitation and Counseling] activity for appropriate action in cases when VA Form 22-6564, Claims Folder Flash, is in the claims folder showing that the veteran is in training.

(2) [Send] a copy of the letter [ ] to the Medical Administration Officer at the clinic servicing the regional office so that treatment eligibility records may be updated.

(3) If the veteran is hospitalized at VA expense, see paragraph 25.09 relative to notification of change of status and use of VA Form 21-653.

d. **Evidence Submitted Prior to Authorization Action.** If the veteran submits evidence within the time allowed, it will be referred to the rating board for action in accordance with paragraph 48.06. If on the basis of new evidence, service connection is continued, [notify] both the activity and the Medical Administration Officer, [Vocational Rehabilitation and Counseling].

e. **No Evidence Submitted.** If the veteran fails to submit evidence within 60 days, [refer] the case [ ] to the rating board for [severance] action under [38 CFR 3.105(a).]

f. **Action on [38 CFR 3.105(a)] Rating**

(1) **General.** At the expiration of the 60-day period of notice allowed by [38 CFR 3.105(d)] [the rating board will take], expedited rating action [ ] for severance under [38 CFR 3.105(a)] if the veteran did not submit additional evidence or the evidence submitted does not establish a basis for continuing service connection.

(a) [ ] The Authorization activity [will take prompt action to effect] the necessary termination or reduction, [ ] effective as follows:

1. The 1st day of the month following the month in which 60 days from the date of notice [expires (38 CFR 3.500(r))], or

2. Date of last payment if final rating action was not taken until after the first of the month in which the 60-day period of notice expired. [38 CFR 3.105(a)]

(b) [The Authorization activity shall notify the veteran by dictated letter] of this action and inform [him or her] of the right to file a notice of disagreement and initiate appeal proceedings.

(2) [ ] **Award Action.** When service connection is severed for the only rated disability (or all disabilities) [prepare an amended award by entering the rating data on the 301 screen, complete the 403 screen using reason code 06 and suppress the letter.]

(a) When service connection is severed for one or more disabilities, but not for all, so that the veteran [is] entitled to reduced benefits (including a change to pension in accordance with par. 29.04), [prepare] amended award using reason code 34 (code 30 if change to pension) [ ] showing the reduced entitlement [an rating data reflecting the severance.] (See par. 48.05 re final rating.)

[(b)] When [one or more service-connected disabilities are severed, and], other service-connected disabilities have increased in severity [so] that an *increased combined evaluation* is warranted, [prepare] the amended award [ ] to authorize increased benefits effective the date of receipt of the claim for increase or the date of entitlement, whichever is later, as warranted by the [38 CFR 3.105(a)] rating, otherwise;

[(c)] When increased evaluation of [the] remaining service-connected disabilities [does not change the] *combined evaluation,* [enter the rating data by amended award processing. Notify the veteran by dictated letter of the rating decision and of his/her procedural and appellate rights.]

NOTE: If one or more of the remaining service-connected disabilities have increased in severity, the [38 CFR 3.105(a)] rating will include in the combined evaluation only those evaluations for the remaining service-connected disabilities to insure against any retroactive increase or benefit attributable to inclusion of the severed condition [(38 CFR 3.400(o)).]

24.03 REDUCTION IN DISABILITY EVALUATION

a. **General.** [Chapter 52 applies to] the reduction or termination of an award under [38 CFR 3.105(e)]. Award actions to be taken by the Authorization activity will be governed by the decisions of the rating board with expedited attention to the furnishing of the 60-day notice required under [38 CFR 3.105(e)] in the month in which the rating is signed so as to accomplish the reduction or termination as of the future effective date assigned by the rating. [(38 CFR 3.501(g))]

b. **Procedure—General.** Upon receipt of a rating under [38 CFR 3.105(e)], action will be taken as follows:

(1) **Reduction to Not Less Than 10 Percent.** [Prepare an amended award (including future rating data)] using reason code 34 and showing as the first line entry the reduced rate authorized as a future rate change effective the date established by the rating, (i.e., the 1st day of the month following the expiration of 60-day notice). [ ]

(2) **Reduction to Noncompensable Evaluation**

(a) [Prepare an amended award by entering the rating data on the 301 screen and completion of the 403 screen using reason code 05, effective the 1st day of the month in which the reduced evaluation is to be effective.]

(b) If the rating contains both a proposal to sever service connection under [38 CFR 3.105(d)] and a reduction under [(38 CFR 3.105(e)] and the proposed severance will result in a reduction to a noncompensable level when the severance is effected, the [amended award] will *not* be prepared until the 60-day period has expired. At that time, action will be taken as set forth in paragraph 24.02f(2).

(3) **Inapplicability of [38 CFR 3.105(e).]** [38 CFR 3.105(e)] is not for application in the reduction or termination of awards in the following instances:

(a) When the account is in suspense. Reduction or discontinuance will be effected in accordance with the facts found [(38 CFR 3.500(a))] but not earlier than the date of last payment [(38 CFR 3.105 and 3.665(d)).]

(b) When the combined evaluation is unchanged because of offsetting increases in another disability (par. 52.05).

(c) When there is a combined increased evaluation (par. 52.06).

c. **Notice to the Veteran**

(1) **General.** When reconsideration of a case by the rating board necessitates reduction or termination of a running award by reason of a change in the veteran's physical condition or because unemployability is no longer established, [advise] the veteran [ ] of the scheduled change and of the right to submit new and material evidence within a period of 60 days to prevent the scheduled reduction or discontinuance. [A target generated letter may be used when a schedular evaluation is reduced; otherwise by dictated letter.] In compensation cases when the evidence shows a probability of entitlement to pension as the greater or sole benefit, [concurrently request] the veteran [ ] to furnish any employment and income evidence considered necessary to establish entitlement. (See also par. 29.04)

[(2)] **Change in Criteria.** When the reduction is based only on a change in the criteria for evaluation disabilities, [ ] inform the veteran [by dictated letter] of the basis for the new evaluation, avoiding any inference that the reduction was due to an improvement in the physical condition.

[(3)] **Appeal.** In all reductions, [inform] the veteran [ ] of the right to file a notice of disagreement and initiate appeal proceedings.

[(4)] **R&E Cases.** If the veteran is in training and compensation payments are terminated or reduced, [prepare] a copy of the award and rating [ ] for the R&E folder and any necessary adjustment. (Par. 23.10)

d. Receipt of Additional Evidence

(1) When, prior to the expiration of the 60-day period, evidence is received which establishes the need for a reexamination, [take] action [ ] upon referral by the rating board, as provided in paragraph 52.07, [to prepare an] amended award restoring and continuing the rate previously authorized, eliminating the 60-day future. Reason code 00 will be used. [Maintain end product control for receipt of the reexamination.]

(2) When, on the basis of new and material evidence a new rating decision grants a restoration or partial restoration of the prior rating:

(a) [Prepare] an amended award [ ] to begin the 1st day of the current month or the 1st day of the month for which the canceled reduction was scheduled, whichever is earlier. [Use] reason code 33 [ ] when the award action is taken subsequent to the effective date of the canceled rating; otherwise [use] "00". [ ]

(b) [Annotate the award document] "New rating (date) cancels prior (date) ."

(c) [ ]

e. Appeals. If a notice of disagreement is filed, [prepare] a statement of the case [ ] immediately (ch. 18) regardless of whether the 60-day period under 38 CFR 3.105(e) has expired. A hearing may also be held before the expiration of the 60-day period and the appeal certified if all issues have been fully joined.

f. Retirement Pay. [If] a veteran waived retirement pay in order to receive disability compensation and [if] as a result of the proposed reduction or discontinuance of the award, the retirement pay would be greater than [the veteran's] disability compensation, retirement pay will be partially or wholly reinstated by the military finance center upon receipt of the data exchange transaction generated by the award action. Notice will not be sent automatically as a computer-generated notice (par. 29.27d(1)) unless special law code 06 is shown on the award. [ ]

24.04 AWARDS UNDER GRADUATED TUBERCULOSIS RATINGS

NOTE: Public Law 90-493 repealed sections 314(q) and 356 of title 38, U.S.C. which provided graduated ratings for inactive tuberculosis. The repealed sections, however, still apply to the case of any veteran who on August 19, 1968, was receiving or entitled to receive compensation for tuberculosis (38 CFR 3.959).

a. Routine Action. When a veteran's evaluation for service-connected tuberculosis is reduced by reason of being inactive, [prepare] an amended award [ ] which will provide for the 2-year 100 percent evaluation and the graduated or residual evaluations assigned for the future.

(1) The first entry for current award data will be the first of the current month in which action is taken.

(2) For periods of entitlement prior to July 1, 1970, the statutory rate of $67 ($54 rate if PTE prior to July 1, 1973) will be shown using reason code 34 as a future rate effective as of the effective date of the 30 percent evaluation using SMC code 36 in the rating.

(3) For July 1, 1970, and subsequent periods of entitlement, the applicable (greater) rate for the 30 percent evaluation will be shown (using reason code 37 if this period overlaps July 1, 1970). SMC code 36 will *NOT* be entered or continued in any rating at the 30 percent evaluation for any period on or after July 1, 1970.

[ ]

b. Notice of Award. [Inform] the veteran [ ] by dictated letter of the award action and of the fact that the 100 percent evaluation may be reduced at an earlier date in the event of failure to report for an examination scheduled by the VA or to follow the prescribed treatment.

c. **Graduation Reaches 0 Percent.** The award will provide for the $67 rate ($54 PTE rate if prior to July 1, 1973) as of the effective date the graduation reaches 0 percent using reason code 34, with SMC code 36 in the rating data from that date. If there are other compensable disabilities, [notify] the veteran [ ] that when the graduated rating is reduced to 0 percent, [he/she may submit evidence] from a private physician if the claimant contends that the respiratory condition warrants a compensable evaluation. This may entitle the veteran to 20 percent or more, instead of 0 percent. However, [notify] the veteran that compensation in lieu of the statutory amount will not be granted unless the disabilities will combine to provide a rating of [20] percent.

d. **Notification to Outpatient Clinic.** [Notify] the Medical Administration Officer for the Outpatient Clinic responsible for the veteran's followup care [ ] when a veteran is granted the 2-year 100 percent evaluation for inactive tuberculosis. [Use] VA Form 21-4173, Hospital or Outpatient Status Report, [ ] for this purpose. Such notification will not be sent veterans granted the 1-year 100 percent evaluation following attainment of inactivity. However, [furnish] a copy of a rating *initially* granting service connection for tuberculosis [to] the Medical [administration] activity concerned. (Par. 49.06a(3)(b))

24.05 AWARDS AFTER RIGHT TO PENSION CEASES

a. **General.** If the entitlement to pension ceases based on a determination of not permanent and total, pension may, nonetheless, be awarded for any prior period of entitlement during which a permanent and total rating was in effect provided the rating for the prior period was not in error. Similarly, after the right to the allowance for aid and attendance or the housebound rate ceases, increased pension may be awarded for any period in which the aid and attendance or housebound rating was in effect and not in error. Adjustments for withheld apportionments and cases in which payment was made at the lowest appropriate rate or withheld under 38 CFR 3.260(b) are also included (see par. 9.03c). In Section 306 and Old Law pension cases terminated due to a not permanent and total rating, if entitlement is later reestablished the only pension law under which benefits may be paid is Improved Pension.

b. **Adjustments.** If action is being or has been taken to discontinue pension or authorize a lesser compensation rate under 38 CFR 3.105(f), an adjustment may be authorized through the last day of the month in which the action is approved. If an award has been suspended and there is no right to pension beyond the date of suspense, the adjustment will be limited to the period prior to the date of suspense 38 CFR 3.105. All adjustments are subject to the veteran's income, net worth, and dependency status. (See par. 14.35b when error is involved.)

24.06 ADDITIONAL COMPENSATION FOR DEPENDENTS

a. **General.** Awards authorizing or discontinuing the additional compensation payable for a spouse, child, and/or dependent parent under 38 CFR 3.4(b)(2) to a veteran rated 30 percent or more disabled for a service-connected condition will include an appropriate [annotation on the award document.] Make dependency code entries [as provided] by paragraph 23.06b(2). (See also par. 23.10 re notice to the VR&C (Vocational Rehabilitation and Counseling) Division.

b. **Award or Increase.** The provisions of 38 CFR 3.401(b) will be applied in determining the effective date of awards of additional compensation for dependents. When substantiating evidence is requested, its receipt will be subject to the provisions of 38 CFR 3.109 [regarding] time limitation for its receipt. Reason code 26 will be used for an award line adding a dependent, or code 27 when simultaneously authorizing an apportionment.

(1) When the existence of a dependent is shown on an original claim and proof is timely received, the additional compensation is payable from the commencing date of the veteran's award, subject to the provisions of subparagraph (3) below.

(2) When a veteran is initially rated 30 percent or more disabled, [notify] the veteran concerning possible additional entitlement on account of dependents and of the evidence necessary to establish relationship and, in the case of a parent, dependency. If such evidence is received within 1 year of the date of request, the additional compensation is payable from the date of the qualifying evaluation or later date the dependency arose. 38 CFR 3.401(b)(3)

(3) When eligibility arises subsequent to the effective date of the qualifying evaluation, by reason of marriage, birth, or adoption of a child, or dependency of a parent, the additional compensation is not payable for any period prior to the date dependency arose, if evidence is received within 1 year of event 38 CFR 3.401(b).

c. Reductions

(1) **Reduction in Rating.** When a claim for additional compensation for dependents is pending or is received during the 60-day period of notice of proposed reduction under 38 CFR 3.105(e), [continue] adjudication of the claim [ ], as the additional compensation is payable under the provisions of 38 CFR 3.501(g)(2) through the end of the month following the expiration of the 60-day period.

(2) **Severance of Service Connection.** The foregoing provisions are not for application when severance of service connection is proposed under [38 CFR 3.105(a).] The additional compensation would not be payable unless it has been previously included in the award. [(38 CFR 3.400(o)).]

(3) **Change in Dependency Status.** [Discontinue] the additional compensation for a dependent [ ] upon loss of or change of status of the dependent, in the following instances:

(a) Death of a dependent (par. 24.16).

(b) Divorce (par. 24.16).

(c) Cessation of dependency of a parent (par. [8.23(b)(1)).]

(d) Unscheduled discontinuance of school attendance of child over age 18 (par. 10.07c(2)).

(e) Marriage of a child (par. 24.16).

d. Notification. [Notify the veteran with a Target generated or dictated letter] of the increased or reduced award of disability compensation because of dependency changes. Since separation or estrangement will not affect an award unless the spouse files claim for an apportionment, such contingencies [shall] not be mentioned in the notification of an increased award.

e. Awards Subject to Offset or Recoupment. (Par. 29.42)

24.07 IMPRISONMENT IN PENAL INSTITUTIONS

a. Discontinuance or Reduction Because of Imprisonment. [Reduce] payments of compensation [ ] and [discontinue] payments of pension to a payee [ ] as provided in this paragraph, pursuant to [38 CFR 3.665] (38 U.S.C. 3113) and [38 CFR 3.666] (38 U.S.C. 505). The following provisions [apply equally] for either the reduction of compensation or discontinuance of pension payments to an imprisoned veteran, surviving spouse, child or parent. (See par. 39.07.)

NOTE 1: Confinement in a penal institution of a veteran rated incompetent constitutes institutionalization for purposes of reduction under [38 CFR 13.75.] (See par. 28.01.)

NOTE 2: If, because of incarceration, there is a reduction of compensation or discontinuance of pension benefits, a review of the claims file should be made to determine if there are any educational benefits being paid which also require adjustment.

(1) **Unofficial Notice.** [If unofficial notice is received that] a veteran in receipt of disability benefits is imprisoned, [inform the veteran by dictated letter] at the last address of record [that we have been notified of his/her incarceration and of the action which will be required citing the applicable statutory authority (38 U.S.C. 505 or 3113). In addition, use VA Form 21-4193, Notice to Veterans Administration of Veteran or Beneficiary Incarcerated in Penal Institution, to request information concerning the incarceration from the appropriate authorities.]

(2) **Official Information—Discontinuance of Pension.** Discontinue pension payments using termination reason code 28, effective the 61st day of imprisonment, when official information is received of:

(a) Conviction of a felony or misdemeanor, and

(b) Imprisonment in a Federal, State, or local penal institution exceeding 60 days. This includes any period of incarceration representing initial confinement following conviction or reincarceration for parole violation.

(3) **Official Information—Reduction of Compensation.** Reduction of compensation payments is required following incarceration of more than 60 days following conviction for a felony committed after October 7, 1980, or in the case of a veteran or beneficiary serving a period of incarceration after September 30, 1980, for whom an award of compensation or DIC is approved after September 30, 1980. However, the full amount of any benefit payment due prior to October 1, 1980, will be paid.

(a) Reduce compensation payments to the 10 percent rate for any veteran with an evaluation of 20 percent or greater, and reduce to one-half of the 10 percent rate for any veteran with a disability evaluation of less than 20 percent, a zero percent combined evaluation with (K), or a statutory (Q) rate, and for any payee in receipt of DIC or death compensation. Reduce the award will be reduced under reason code 28, effective the 61st day of imprisonment when official information is received of:

1. Conviction of a felony, and

2. Imprisonment in a Federal, State, or local penal institution exceeding 60 days. This includes any period of incarceration representing initial confinement following conviction or reincarceration for parole violation.

(b) Do not reduce payments for any period during which the payee is participating in a work-release program or is residing in a halfway house.

(c) Establish a type 1 withholding for the amount of compensation not payable during incarceration.

(4) **Liaison With Penal Institutions.** To enable compliance with the provisions regarding the incarceration of VA benefit recipients, each regional office shall establish and maintain a liaison with the State correctional authority (and with any Federal penal institution within the regional office's jurisdiction) to provide systematic notification of incarceration of VA beneficiaries in receipt of either compensation, pension or educational benefits on or after October 1, 1980. Advise the authorities of the importance of notifying the VA on a timely basis to avoid the necessity of creating overpayments.

(5) **Suspended Sentence, Confinement Awaiting Trial, etc.** Mere confinement awaiting trial or examination or treatment for a mental or physical condition followed by conviction and a suspended sentence and probation supervision with no further imprisonment imposed, will not warrant termination of pension benefits. The counting to the 61st day begins only with the first day of imprisonment following conviction.

(6) **Notice of Discontinuance or Reduction to Payee.** [Before benefits may be reduced or discontinued the proper due process procedures must be followed. Cite the applicable statutory authority (38 U.S.C. 505 or 3113) and inform the payee that payments may be resumed as of the date of release from prison if notice of release is received within 1 year of the release date; otherwise, as of the date of receipt of notice (38 CFR 3.665 (i) and 3.666 (c)). At the time the payee is informed of the due process rights, also furnish information about the rights of dependents to an apportionment and other information as applicable. If the address of the dependents is available, initiate development for an apportionment with them at the same time as development is undertaken with the payee.]

NOTE: Make an entry in the INCARCERATION IND field of the M15 screen using the CORR command in conjunction with amended award action. Enter "YES" to identify any prison case in which the benefit is apportioned and for any compensation or DIC case reduced due to incarceration. Delete this indicator by entry of "NO" upon release from incarceration.

b. **Veteran Imprisoned**

(1) **Veteran Entitled Only to Pension.** If an imprisoned veteran is married and/or has a child or children, the notice will include information that an apportionment may be authorized to any of these dependents upon receipt of a claim from the veteran or the eligible dependent(s).

(a) The income of such dependent(s) must not exceed the income limitation applicable to payment of Improved Pension *death* benefits.

(b) The apportioned award will not exceed whichever is the lesser, either the death pension rates payable under the Improved death pension law or the amount which the veteran was receiving at the time of imprisonment.

(c) Apportioned awards will be effective as of the first day of the veteran's nonentitlement, provided claim therefor is received within 1 year from that date or later date of notice; if request is later than 1 year, apportionment will be made as of

date of claim. The award will be made subject to prior payments to the veteran over the same period, if any, by authorizing the differential rate for that period.

(2) **Veteran Entitled to Compensation.** Disability compensation payments are [ ] subject to [reduction] under VAR [1665]. If the veteran's compensation includes benefits based on individual unemployability the case should be referred to the rating board for a determination as to continued entitlement to code 18 in view of his/her removal from the "work possible" environment.

[*NOTE: The effective date of a rating based on loss of individual unemployability will be as provided in VAR 1501(E) although the reduction under subparagraph a(3) above may be effective from an earlier date. The veteran will be advised of the future date reduction in evaluation as provided for under VAR 1105(E) and, as applicable of the reduction in amount payable due to the incarceration.*]

(a) If the veteran is [ ] entitled to compensation [and pension and if the veteran has neither a spouse nor child,] the compensation benefit will be awarded [subject to reduction as specified in subparagraph a(3) above] effective the date of termination of the pension entitlement (using reason code 28), without the necessity of a formal election (VAR 1666(D)). See paragraph 29.04.

(b) If the veteran has a spouse and/or children, notification that an apportionment of pension may be made to such dependents will be furnished and the veteran requested to advise whether an apportionment is desired. [The veteran is also to be furnished an explanation of the effect of electing compensation and how such an election would reduce the amount available for apportionment. If the veteran then requests compensation, it shall be awarded from the date the veteran requests the VA to take such action.]

(c) Upon receipt of a request for an apportionment, whether by the veteran or dependent, development necessary for consideration to any apportionment under VAR 1666 will be undertaken.

(3) **Preparation of Record Purpose Award [of Pension] and Apportioned Award.** When an apportionment is to be authorized, a record purpose award will be made to the veteran under *special law code 05* (par. [15.10]). For these cases, the veteran's disabilities, income and net worth will be deemed to remain static during imprisonment.

(a) In cases of pension entitlement only, the full amount of disability pension will be withheld (type 1) from the 61st day of imprisonment.

(b) [(Deleted.)]

(c) [ ] The income date last [entered] on the veteran's award, and the pension rate based thereon, will be considered continuing.

(d) The apportionee award will be prepared in the same manner as any other apportionee award (par. 26.02) except that the complete income information for an apportionee spouse and the children in Improved Pension cases will be entered on the apportioned award. Although not for [entry], these data will be entered for ready-reference review required upon receipt of the annual income questionnaire issued on these cases for special handling (par. 9.24).

Example:

Veteran in receipt of Improved Pension at monthly rate of [$462.08] (based on IVAP of $1,800) until 10-14-80,] the 61st day of imprisonment. Request for apportionment received establishing the spouse's income as $900 which would warrant a death pension rate of [$314.60] requiring award data as follows:

Veteran's Award–Payee 00

403

DISABILITY/DEATH AWARD 03-20-81

FILE NUMBER				END PRODUCT			NAME				
DATE	RSN	TOTAL	WITHHOLD	DED-OFFST	RATE	EC	DISAB	INC	DEP	SH	SLC
10-14-80	27	462.08	1-462.08		0000	2L	PT	1800	12-00		05
1-5-91	24	433.25	1-433.25						11-00		
3-8-92	24	337.00	1-337.00						10-00		

Apportionee Award–Payee 10

403

DISABILITY/DEATH AWARD 03-20-81

FILE NUMBER				END PRODUCT			NAME				
DATE	RSN	TOTAL	WITHHOLD	DED-OFFST	RATE	EC	DISAB	INC	DEP	SH	SLC
10-14-80	00	314.60			314.60	2L		900	12-12		
	24	251.25			251.25				11-11		
	24	174.08			174.08				10-10		

Child data will be entered [for] this award per paragraph [15.18]

NOTE: Complete income data will not be required for input on either award.

[(4) **Apportionment of Compensation Award.** Compensation not payable to a veteran during incarceration may be apportioned, and the veteran's dependents are to be notified of their right to an apportionment if evidence of their existence is known and their address can be obtained.

(a) The amount of compensation not paid to the veteran may be apportioned to the veteran's spouse, child(ren) and dependent parent(s).

NOTE: No apportionment may be made to or on behalf of any person who is incarcerated in a Federal, State or local penal institution for conviction of a felony.

(b) Any apportionment to be made will be authorized no earlier than the 61st day of the beneficiary's imprisonment.

(c) In determining individual need, consideration will be given to such factors as the apportionee claimant's income and living expenses, the amount of compensation available to be apportioned, the needs and any expenses of other apportionee claimants as well as any special needs, if any, of all apportionee claimants.

(d) A dependent for whom an apportionment is granted is to be informed that the apportionment is a special apportionment granted only for the period of the beneficiary's incarceration, and that the apportionment is subject to immediate discontinuance upon the incarcerated person's release or participation in a work-release or halfway house program. A dependent is also to be informed that if the dependent and the incarcerated person do not live together when the incarcerated person is released (or participates in a work-release or halfway house program), the dependent may submit a new claim for apportionment.

(e) Upon release from incarceration the apportionee award(s) is to be discontinued effective DLP provided that the veteran is reunited with the apportionee. It will be presumed that the veteran and the apportionee are reunited unless there is evidence to the contrary. The incarcerated person's award will be restored at the earliest applicable date providing for payment of any available amounts withheld from the date of release which were not apportioned. The full rate of compensation will be paid effective the date of discontinuance of any apportionment(s).

(f) If, upon release from incarceration, that person is not reunited with all dependents for whom an apportionment was granted, the released person's award is not to include any additional amount payable by reason of dependent(s) not reunited with the released person. The award to this dependent(s) is to be reduced to the additional amount payable for the dependent(s) subject to submission of a new claim for an increased apportionment. An apportionment made to a dependent parent is not to be continued beyond incarceration unless the veteran is incompetent and the provisions of 38 CFR 3.452(c)(1) and (2) are for application.

c. **Imprisonment of Dependent**

NOTE: See paragraph 39.07 re death pension adjustments.

(1) **Discontinuance for Excess Income.** When the veteran's entitlement to pension under the applicable income limitation is contingent upon the continued dependency status of a *sole* dependent and that dependent is imprisoned in excess of 60 days following conviction, it will be discontinued using reason code 11, effective the 1st day of the month following the month in which the 61st day of imprisonment occurs.

(2) **Reduction in Pension Rate.** When payments are being made to a veteran with two or more dependents, and a dependent is imprisoned for a period in excess of 60 days, the veteran's award will be amended to reflect the rate which would be payable as if the imprisoned dependent did not exist, effective as provided in subparagraph (1) above, but using reason code 28. In Improved Pension cases, any income of the imprisoned dependent will be ignored and the countable income recomputed.

NOTE: If the veteran is also entitled to compensation, the compensation benefit will be awarded as provided in subparagraph b(2) above.

d. **Imprisonment of an Apportionee.** When a dependent receiving an apportioned share of a veteran's award is imprisoned for more than 60 days, the apportionee's award will be discontinued as provided in subparagraph a above and the veteran's award amended to reflect the rate which would be payable as if the dependent did not exist, or discontinued, as provided in subparagraph c above.

e. **Resumption of Pension Payments Upon Release.** Subject to existence of current entitlement, pension payments may be resumed upon release from incarceration, as provided below:

NOTE: When the benefit previously being paid was either Section 306 or Old Law pension, this benefit will be resumed (if entitlement exists) upon discharge in the absence of an election of Improved Pension benefits.

(1) **No Apportionment During Imprisonment.** The resumption of pension payments to the veteran, when there has been no apportionment, will be effective as of the date of release, if notice is received within 1 year from the date of release. If notice is not received within the 1-year period, payments of pension will be resumed effective the date such notice is received. If the veteran was receiving compensation while imprisoned, the award will be adjusted similarly, depending upon date of receipt of notice, to authorize payments of pension in lieu of compensation, if pension is the greater benefit. (Par. 29.04)

(2) **Award Apportioned During Imprisonment.** The award to the apportionee(s) will be discontinued effective the last day of the month in which notice of release is received. The veteran's award will be effective as provided above and will authorize the *difference* between the veteran's award and the apportionee's payments for the concurrent period until termination of the apportionee's award.

(3) **Release of Imprisoned Dependent.** When an imprisoned dependent has been released, any resumption or increase in the veteran's pension benefit because of the release of an imprisoned dependent will be effective the date of release, if notice is received within 1 year from that date, otherwise, from the date such notice is received.

24.08 FAILURE TO REPORT FOR EXAMINATION

[a. **General.** Title 38 CFR 3.655(a) provides that payments of disability compensation or pension shall be discontinued for a veteran's failure to report for a VA examination without adequate reason. Predetermination notice shall be afforded the veteran before the account is adjusted.

b. **Initial Action.** If you receive notice that the veteran failed to report for a scheduled examination, refer it to the rating board. The rating board will prepare a "Failure to Report" rating. See paragraph 55.07.

c. **No Static Disabilities.** If the rating board determines that the veteran has no static disabilities or protected evaluations, advise the veteran that we must stop compensation payments because of the veteran's failure to report for the scheduled examination. The proposed stop date will be no earlier than the first of the month after the date which is 60 days from the date of the letter informing the veteran of the proposed action. Furnish notice of the veteran's due process rights and ask the veteran to inform us promptly if the veteran is now ready to report for the examination. Take end product 310 and establish a future diary under end product 600. If the veteran does not respond within 65 days, suspend the award using reason code 17 and furnish notice of procedural and appellate rights.

d. **Static Disabilities**

(1) **Preadjustment Action.** If the rating board determines that the veteran has static disabilities or protected evaluations, advise the veteran that we must reduce compensation payments to the rate payable for static or protected disabilities because of the veteran's failure to report for the scheduled examination for nonstatic disabilities. In the letter to the veteran, list each static or protected disability with percentage and the new combined evaluation. The proposed effective date of reduction will be no earlier than the first of the month after the date which is 60 days from the date of the letter informing the veteran of the proposed action. Furnish notice of the veteran's due process rights and ask the veteran to notify us promptly if the veteran is now ready to report for the examination. Take end product 310 and establish a future diary under end product 600.

(2) **Veteran Fails to Respond.** If there is no response within 65 days, reduce the award to the rate payable for the static disabilities effective as proposed above or date of last payment (DLP), whichever is later and furnish notice of procedural and appellate rights. After the award has been processed and the veteran has been informed of the action taken, refer the file to the rating board for a supplemental rating.

NOTE: Normally the new combined evaluation will be the same as that shown on the deferred "Failure to Report" rating. However, if the rating board later determines that the combined evaluation should be lower than was shown on the deferred rating, the veteran must be afforded predetermination notice before the award can be reduced to the new combined evaluation. In this eventuality, reduce the award as indicated in the original predetermination notice letter and send another letter informing the veteran of the additional reduction.

e. **Failure to Take Timely Action.** Adjustments due to a veteran's failure to report for a scheduled examination are always made prospectively. This is the case even if we lose control of the issue and continue payments beyond the normal due process period. Do not stop or reduce a veteran's payments retroactively because of the veteran's failure to report for a scheduled examination.

f. **Veteran Requests a Hearing.** The predetermination notice of due process rights will have advised the veteran of the right to request a hearing before the proposed reduction or suspension. If the veteran requests a hearing within 30 days of the date of the predetermination notice letter, do not adjust the award until:

(1) the hearing is held, any evidence developed as a result of the hearing is received, and a final decision is made, or

(2) the veteran fails, without good cause, to appear.

g. **Veteran Ready to Report for Examination.** If notice of willingness to report is received from the veteran before the award has been reduced or suspended under paragraphs c or d above, defer the award action. Refer the case to the rating board for a new VA Form 21-2507, Request for Physical Examination. Notify the veteran that the examination will be rescheduled and that if the veteran fails to report for the rescheduled examination, the award will be reduced or suspended immediately. If the veteran fails to report for the rescheduled examination, suspend or reduce to the rate payable for the static evaluation(s) and furnish contemporaneous notice to the veteran.

h. **Award in Suspense for 6 Months.** If the veteran's award has been suspended for 6 months due to failure to report for a scheduled examination, a VA Form 20-6560, Notice of Benefit Payment Transaction, with message code 615, Account in Suspense 6 Months or More is generated. If the veteran has neither indicated a willingness to report for the examination nor objected to the suspension of the award, stop the award DLP using reason code 17 without further notice to the veteran. Take no end product credit since a final end product credit was taken when the award was suspended.

i. **Retired Pay Cases.** If the veteran receives military retired pay and the compensation award is reduced or stopped, a notice is generated to the applicable service department finance center. This causes the service department to adjust the veteran's retired pay. If the veteran later reports for the examination and compensation payments are to be resumed or increased, follow the procedures in paragraph 29.27 concerning awards in retired pay cases.

j. **Abandoned Claims.** Under 38 CFR 3.158(b), a claim is considered abandoned if the veteran fails, without adequate reason, to report for the examination within 1 year of the date of request.

(1) If the veteran indicated a willingness to report for a rescheduled examination but did not report, consider the claim to have been abandoned 1 year from the date the rescheduled examination was to have been held.

(2) If the veteran never indicated a willingness to report for a rescheduled examination, consider the claim to have been abandoned one year from the date the original examination was to have been held.

(3) If a claim has been considered abandoned for failure to report for a scheduled examination and the veteran subsequently agrees to report for the examination, award benefits from the date of receipt of a new claim if the veteran reports for the examination within 1 year of the date of notice to report (38 CFR 3.655(f)).

k. **Pending Claims.** See paragraph 16.03.

l. **Incompetent Veterans.** See paragraph 28.04.]

24.09 VETERAN DISAPPEARED

a. **Initial Actions**

(1) When the second VA check payable to or for a veteran is returned for the reason "Whereabouts Unknown," "Moved Left No Address," etc., payments are automatically suspended as a routine operation in the computer processing of a returned and canceled check (par. 17.03c).

(a) Msg Code 612, Account Suspended — Returned Checks — Undeliverable, issued on VA Form 20-6560 to provide notification of suspense of the veteran's award will be reviewed by Adjudication.

(b) In *compensation* cases, if there is a deduction for payment of National Service Life Insurance or United States Government Life Insurance premiums, or VMLI (Veterans Mortgage Life Insurance) premiums, or insurance loan payments, the form will be annotated and referred to the Adjudication Division for award action to continue the insurance deduction. (See subpar. c(3) below.)

(2) If award action under this paragraph is not required, the suspense will be allowed to continue. Upon receipt of the 6-month followup notice on VA Form 20-6560, payments still in suspense will be discontinued, subject to resumption by reopened award under the provisions of 38 CFR 3.358(c) effective as of the date of last payment, upon receipt of a valid address, if continued entitlement is otherwise established.

b. **Awards Involving Dependents**

(1) **Claim by Dependents(s).** If the whereabouts of a veteran who was receiving or entitled to receive disability compensation, Improved Pension, Section 306, or Spanish-American War pension remain uknown for a period of 90 days or more, payments may be made, pursuant to (38 CFR 3.656, to or for a spouse, child(ren) and, in disability compensation cases, parents. Old Law pension and special pension for the Medal of Honor are excluded.

(a) Development of a dependent's potential entitlement will be initiated *only upon receipt of a specific request.*

(b) As required, VA Forms 21-686C, Declaration of Status of Dependents, and an Eligibility Verification Report (EVR) may be used for development necessary to establish relationship and income and net worth of a spouse, child(ren) or parent. When possible entitlement of children is involved, an EVR form should be furnished for each child.

(2) **Awards to Dependents — General.** A record purpose veteran award will be prepared as provided in subparagraph c below. Apportioned awards to dependents will be made effective the date of last payment to the veteran upon receipt of a claim within 1 year from that date and timely submission of necessary evidence; otherwise, from date of claim or receipt of claim. The apportionee awards will be prepared as usual. No termination date will be provided except as required on an award to children. However, a control will be established for review of the

claims folder upon expiration of 7 years from the date of disappearance, as provided in subparagraph d below. At the expiration of the control period, action will be taken as specified in paragraph 14.17.

(3) **Disability Compensation Cases**

(a) **Rate Payable.** In compensation cases the rate payable will be *the lesser of:*

1. The DIC rate or

2. The rate of compensation payable to the veteran. *NOTE: The determined rate will be subject to any authorized insurance deductions (subpar. c below).*

(b) **DIC Rate to Spouse.** When DIC is authorized to a spouse, the veteran's pay grade and years of service will be [annotated] on the apportionee award. The award to a spouse will not be withheld pending ascertainment of pay grade and years of service. The rate payable will be determined based on the lowest DIC rate, subject to further adjustment.

(c) **DIC Rates to Parents.** [Use the income of the parent(s) to determine the rate payable. The income data upon which the rate is based will be annotated but not entered on the apportionee award document.]

(4) **Disability Pension Cases**

(a) **Rate Payable.** In pension cases the rate payable will be the *lesser of:*

1. The death Improved Pension rate as determined by the income of the spouse or child(ren), or

2. The rate of pension payable to the veteran at the time of disappearance.

NOTE: Unlike the rule applicable to disability compensation cases, authorized insurance deductions in effect at the time of the veteran's disappearance will be disregarded.

(b) **Income Data.** [Prepare an apportioned award to a dependent at the death pension rate. Income and net worth will be annotated but not entered on the award to the spouse or child. This annotation will be required on any separate award to a child when the spouse is also awarded benefits. The income entry on the veteran's record purpose award will reflect his/her income as shown in the master record] at the time of disappearance.

c. **Record Purpose Veteran Award.** An open-end record purpose award under *special law code 04* will be prepared in accordance with paragraph [15.10.] Income and net worth entry requirements will be as specified in subparagraph b(4)(b) above.

(1) If the veteran's award was not subject to an insurance deduction, and an apportionment is being made to a dependent, [enter zeroes in the "RATE" field.] The full amount of disability compensation or pension which the veteran was receiving will be [entered] as a type 1 withholding.

(2) **Insurance Deduction Involved—Compensation Cases Only.** If an insurance deduction was in effect at the time of the veteran's disappearance, [prepare] the record purpose award [to] show the amount of insurance deduction in the ["RATE" field.] The balance of the award (including amounts payable to dependents) will be entered as a type 1 withholding. Special law code 04 will be entered on the award. [(Par. 15.32a(4))]

(3) **Award for Insurance Deduction—No Dependents.** If the veteran's *compensation* award was subject to an insurance deduction, and the only award action required is to maintain the deduction in effect, the record purpose award will show the amount of the deduction as the "Monthly Payment." The balance of the rate to which the veteran would be otherwise entitled will be entered as a type 1 withholding. The master record insurance deduction, previously established, will thereby continue for the proper application of the amount specified.

Examples:

I. [Veteran A was receiving compensation including an additional amount for a spouse for a static disability evaluated at 70 percent in the amount of $653, subject to an insurance deduction in the amount of $15. The DIC rate available to the spouse is $476 based on the pay grade E-1 from 4-1-85. Since the DIC rate is less than the rate of compensation payable to the veteran, the full DIC rate is payable to the spouse.]

II. [Veteran B was receiving compensation including an additional amount for a spouse for a static disability evaluated at 60 percent in the amount of $521 subject to an insurance deduction of $20. The DIC rate available to the spouse is $502 based on pay grade E-3 from 4-1-85. Since the amount payable to the spouse plus the insurance deduction may not exceed the amount of compensation the veteran was receiving, only $501 and not the full DIC rate may be paid.]

III. [Veteran C was receiving Improved Pension in the amount of $413.08, including additional pension for a spouse, subject to an insurance deduction of $15. On the basis of the spouse's income, the death pension rate would be $160.25. Since the amount of death pension based on the income of the spouse is less than the veteran's rate of pension, the death pension rate of $160.25 is payable. The veteran's record purpose award will make no provision for continuation of the insurance deduction and the veteran's gross entitlement will be carried as a type 1 withholding.]

d. **Continuation of Awards—Controls.** [Use the DIAR command] to establish a master record future date control under reason code 13, "Disappearance 7- Year Review ([38 CFR 3.656(c)])" for [a decision on presumption of death (ch. 14, subch. III)].

(1) **Pension.** In pension cases, [cancel] any controls established for a future examination. [ ] For the purposes of this paragraph the veteran's status as to disability, income, and net worth will be deemed to remain static while the missing status continues. However, since entitlement is based on the claimant's income and net worth, pension awards to a spouse under this paragraph will be subject to annual income questionnaire processing to determine continued entitlement and/or whether an adjustment between the death pension rate and the veteran's disability pension rate is in order. (See par. [9.33a(1)(c).])

(2) **Compensation.** [Do not cancel] any control previously established for a future examination in a compensation case [ ] solely because of the veteran's disappearance. If a future examination is required under [38 CFR 3.327(b)] but no control has been established, an appropriate control will be prepared.

(a) Upon expiration of the control for a scheduled VA examination following the veteran's disappearance, the rating board will determine whether the compensable evaluation should be discontinued or adjusted for static disabilities (par. 24.08).

(b) Adjustment or discontinuance of awards will be effective the date of last payment.

1. If a veteran's award has been continued in the amount of the insurance deduction and the total amount of compensation otherwise payable is reduced to an amount less than that required for insurance purposes, [discontinue] payment of the amount awarded for insurance purposes. [ ] This action will also be taken if, on automatic renewal of term insurance or other special provision, the amount required for insurance purposes is greater than the total amount of compensation payable. VA Form 20-6560 Msg Code 613, INSURANCE (CHANGE) (DISC) HIT SL 04 RECORD, is provided for these cases.

2. Upon termination of the payment for insurance purposes, [adjust] any awards for dependents [ ] if in order, with appropriate amendments to the veteran's record purpose award.

e. Reappearance of Veteran

(1) [Discontinue] award(s) to dependent(s) made under this paragraph [ ] the date of last payment promptly upon learning of the veteran's whereabouts, [and inform the payee of the reason.] However, the record purpose award or, in compensation cases, the award for insurance purposes will not be disturbed pending resumption of payment to the veteran.

(2) Resumption of payments to the veteran, in accordance with the facts found, may be by amendment to the record purpose award. The special law code 04 will be zeroed out by entry of two zeros [in the SLC field on screen 401.]

24.10 AWARD OF MEDAL OF HONOR PENSION

a. General. When certification or other official notification is issued by the service department or the Department of Transportation that a veteran or person in service is entitled to Medal of Honor pension, [add] the additional amount payable by reason of Medal of Honor [ ] to any current award or [pay] as the sole benefit from the date certified. This special pension does not deprive the veteran of entitlement to any other pension or any other benefit, right or privilege to which there may be entitlement under any laws of the United States, but is in addition thereto. This special benefit is not subject to reduction under [38 CFR 3.551] nor termination under [38 CFR 3.557. (38 CFR 3.802)]

b. Sole Benefit. When Medal of Honor pension is initially awarded as the sole benefit payable, [enter the date of receipt of the Medal of Honor in the MEDAL OF HONOR field on the 401 screen to support the award. Prepare the award on the 403 screen with special law code 01 (par. 15.32a(a)) and the entitlement code for compensation applicable to the period of service involved. Annotate the award document to show] that Medal of Honor pension is awarded as the sole benefit.

c. Payable as Additional Benefit. [Prepare] awards of compensation [or] pension which include Medal of Honor pension [ ] in the manner and with the applicable data required to justify the compensation or pension benefit authorized, except that the rate payable will be the compensation or pension rate if any, [ ] *plus* the $200 payable as Medal of Honor pension. [ ] (38 U.S.C. 562)

(1) **Special law code 01** will be used with an appropriate notation [on the award document] citing the fact of and authority for the payment of Medal of Honor pension as an additional benefit. (See par. [15.32b] re order of precedence for entry in special law code field.)

(2) If the Medal of Honor pension becomes the sole benefit payable, [prepare an amended award to terminate the other benefits and change the entitlement code if required.]

24.11 NAVAL PENSION

Payment of naval pension is authorized on the basis of an application to and certification by the Secretary of the Navy, to certain veterans who served in the Navy or Marine Corps. These certifications specify the amount of naval pension payable in each individual case. The benefit is payable in a manner similar to Medal of Honor pension, as the sole benefit or as an additional benefit, except that these awards are made under *special law code 02* [par. 15.32(a)(2)], with the amount of Naval Pension [annotated on the award document.] The benefit *is subject* to adjustment under [38 CFR 3.551.] No concurrent payment with VA pension or compensation can be made unless the concurrent payments were *initially authorized prior to July 14, 1943* [(38 CFR 3.803(b)).]

a. Under the provisions of 10 U.S.C. 6159, naval pension is payable at a monthly rate equal to one-half the pay at time of discharge for an enlisted person or petty officer, disabled from sea service, who had *20 years* or more service. *NOTE: Section 6159 was repealed by Public Law 91-482 effective October 21, 1970, but a savings provision in the Act continued entitlement for those entitled on October 20, 1971 to a pension under that section.*

b. Section 6160 of Title 10, United States Code, provides for payment of naval pension to an enlisted person or petty officer, disabled and in need, who had *10 years* service. The amount payable is determined by the Secretary of the Navy according to need. *When paid concurrently,* the naval pension may not exceed one-fourth the rate of pension or compensation payable, exclusive of any additional amounts payable for dependents or as special monthly compensation.

c. The Washington regional office has exclusive and permanent jurisdiction in these cases (par. 2.02a(8)).

24.12 AWARDS TO VETERANS IN U.S. SOLDIERS' AND AIRMEN'S HOME, WASHINGTON, DC

a. **Jurisdiction.** Upon receipt of notice that a veteran is domiciled in the U.S. Soldiers' and Airmen's Home Washington, DC, the claims folder will be permanently transferred to the Washington regional office, pursuant to paragraph 2.02a(10), as the office exclusive jurisdiction.

b. **Manner of Payment.** Payments of *wartime* disability compensation being made to a veteran will continue to be made direct notwithstanding domicile in that institution. Except as provided in subparagraph d below, payments of disability pension or compensation (other than compensation to wartime veterans) will be paid under a consolidated voucher as provided below, to:

Treasurer
U.S. Soldiers' and Airmen's Home
A/C (Initials and Surname of Veteran)
Washington, DC 20315

(1) [Process a change of address under the CADD command and concurrently enter the consolidated pay number 7271 under the CORR command. If an amended award is required, enter the consolidated payee number 7271 under the CORR command.]

(2) Claims folders transferred to WRO on the basis of this paragraph [will require change of address processing as stated above, if not previously processed by the transferring office.]

c. **Veteran Leaves the Home.** When a veteran being paid on a consolidated voucher ceases to be a resident of the home, the award (with consolidated pay number zeroed out) will be made payable to the veteran unless there is a transfer to St. Elizabeths Hospital as a U.S. Soldiers' Home patient (par. 24.13). In this latter instance, payments will continue on the consolidated payment basis.

NOTE: If the veteran should leave the Home before award action is taken, no retroactive award to the Treasurer will be made for the period while domiciled at the Home.

d. **Fiduciary Involved.** If payments are being made to a fiduciary at the time of admission to the Home, the award will not be changed from the fiduciary to the Treasurer of the Home.

24.13 AWARDS TO VETERANS INSTITUTIONALIZED IN ST. ELIZABETHS HOSPITAL, WASHINGTON, DC

The controlling procedure on institutional awards to the chief officer of a non-VA institution (ch. 28, subch. II) will apply when [an incompetent] veteran without a fiduciary is a patient at St. Elizabeths Hospital, Washington, DC. If the veteran is rated competent even though retained in that hospital, direct payment of compensation or pension will be made to the veteran with [competency payment code 1 (screen 601)] reflecting "competent" and direct payment. (Pars. 23.07 and 49.15)

24.14 CHANGE OF LAW OR ISSUE

a. **Initial or Increased Awards.** Under [38 CFR 3.114(a)], retroactive benefits may be authorized in certain cases [in which the claimant had potential entitlement at the time the liberalizing law or regulation became effective.] Its provisions are applicable to those persons who become entitled to initial or increased benefits solely because of liberalizing changes in law or administrative issues, provided that the liberalized eligibility requirements are met as of the effective date of the change and the claimant was eligible during the entire period for which retroactive payments are to be made. [Therefore, the regulation is not limited to cases involving pending or previously disallowed claims, but it may also apply to original claims filed after the change in law or administrative issue.]

(1) When liberalized standards of entitlement are established by liberalizing law or approval of a liberalizing VA issue (e.g., change in rating or dependency criteria, [ ]) benefits may be awarded or increased retroactively, in accordance with [38 CFR 3.114(a),] as follows, but not for any period prior to December 1, 1962:

(a) From the *effective date of the law or VA issue* if, within 1 year thereof the case is reviewed on VA initiative (in the course of a general review or routine handling) or by reason of a receipt of a request from the claimant or his or her representative.

(b) For a *period of 1 year prior* to the date of the administrative determination of entitlement when the case is reviewed on the initiative of the VA more than 1 year after the effective date of the law or VA issue.

(c) For a *period of 1 year prior* to the date of receipt of a claimant's (or representative's) request for review received more than 1 year after the effective date of the law or VA issue.

(2) In these cases the claimant must have met the requirements of the liberalizing law or regulations:

(a) On the effective date of such law or regulation, *and*

(b) On the effective date of the award, *and*

(c) Continuing during the entire retroactive period.

(3) The provisions of the regulation are also for equal application for the adjustment of pending and disallowed claims.

b. **Reduction or Discontinuance of Awards.** [38 CFR 3.114(b)] provides a general rule for situations in which, because of a new law or regulation or a change in the interpretation of a law or VA issue (e.g., change in the Schedule for Rating Disabilities or a revision of VA Regulations), it is determined that an award which was properly made under instructions in effect at that time, should be reduced or discontinued.

(1) In such cases, in the absence of other specific statutory or administrative provisions, the payee will be given a 60-day notice of the proposed reduction or discontinuance and of the right to submit evidence.

(2) The award will be adjusted or terminated the 1st day of the month following the month in which the 60-day period expires.

24.15 AUTHORIZATION OF AID AND ATTENDANCE IN DISABILITY PENSION CASES

a. **General.** Additional allowance for aid and attendance is governed by [38 CFR 3.351(c)]. Veterans who are receiving or entitled to receive disability pension under 38 U.S.C. 521 [will be considered] to be in need of regular aid and attendance if they are patients in a nursing home because of mental or physical incapacity. [ ]

b. **[Requirement for Consideration as a Nursing Home Under 38 CFR 3.351(c)(2).** Only the following facilities meeting the definition of a nursing home under 38 CFR 3.1(z) will be considered for purposes of allowance of aid and attendance based on patient status under 38 CFR 3.351(c)(2):

(1) Any extended care facility which is licensed by a State to provide skilled or intermediate-level nursing care,

(2) A nursing home care unit in a State veterans' home which is approved for payment under 38 U.S.C. 642, or

(3) A VA nursing home care unit.

c. **Identification of Qualifying Facilities**

(1) Obtain a listing of extended care facilities licensed to provide skilled or intermediate-level care from the State licensing and/or certification authority. The listing shall be maintained as current as the State is able to provide. If an additional facility is identified by the licensing authority as a result of development of a claim, or otherwise, the listing shall be annotated to show the facility's status as a licensed skilled or intermediate-level nursing home and to show the date of recognition by the licensing authority.

(2) Identification of State veterans home facilities for which the nursing home care per diem rate is payable and of VA nursing home care units may be obtained from the Medical Administration activity at medical centers.

(3) The facilities identified by the State licensing and/or certification authority and by the Medical Administration Activity shall be used as the exclusive basis for consideration as a nursing home.]

d. [**Authorization Grant of Aid and Attendance Based on Nursing Home Status.** Aid and attendance based upon patient status in a nursing home will not be granted unless the facility meets the criteria listed above *and* a responsible official of the facility has stated that the claimant is a patient in the facility because of a mental or physical disability. Placement in a VA nursing home care unit establishes status as a patient because of a mental or physical disability.

(1) Any claim for aid and attendance which cannot be granted on the basis of patient status in a facility which meets the criteria of subparagraph b above must be developed to establish a factual basis for rating.

(2) In Section 306 and Old Law Pension cases, the additional aid and attendance allowance is only payable if entitlement arose on or before December 31, 1978 (par. 9.10d).]

e. **Nursing Home Patient Status Established.** When evidence establishes the veteran's nursing home patient status [(statement from a nursing home official that the veteran is a patient because of a mental or physical incapacity) and there are no other concurrent issues requiring a rating decision, enter the effective date of the allowance of aid and attendance in the A/A FROM TO field on the 401 screen (par. 15.23b(1)). Prepare the award on the 403 screen entering PT-A/A in the DISAB field to authorize aid and attendance allowance without need for a rating (par. 15.31c). Annotate the award document to show "aid and attendance 38 CFR 3.351(c)(2)".] If a period of VA or non-VA hospitalization results in a discharge of the veteran within 90 days to [a facility which meets the criteria of subparagraph b above,] as a patient, aid and attendance may be authorized without a rating from the date of hospital admission subject to the effective date provisions of [38 CFR 3.401.]

f. **Rating Required.** [A rating decision must be prepared to establish entitlement to aid and attendance if the veteran does not meet the requirement of patient status in a facility which meets criteria of subparagraph b above, or if aid and attendance is the issue in any compensation case.] A rating is also required to establish entitlement from the date of hospital admission [when] the immediately preceding period of hospitalization exceeded 90 days, or from an earlier date. (See par. 16.08d(4) concerning the need for a rating in Section 306 and Old Law aid and attendance or housebound claims.)

[g. **Adjustment of Awards.** Give predetermination notice (par. 14.36f) when a case is discovered in which a grant of aid and attendance was based upon placement in other than a facility which meets the criteria of subparagraph b above, or when it is necessary to reduce or discontinue benefits because of disallowance of an exclusion from income of expenses in a nonqualifying facility. Following expiration of the due process notice period, make the adjustment under 38 CFR 3.500(b)(2) unless the circumstances clearly prevent application of administrative error provisions.

(1) If discontinuance of the aid and attendance under 38 CFR 3.351(c)(2) is required, notify the claimant of the award action with a dictated letter which also requests that he/she furnish medical evidence establishing a factual need for aid and attendance. The medical evidence received will be interpreted liberally as establishing "reasonable probability" of a valid claim (par. 22.10).]

(2) When entitlement to aid and attendance is established on a factual basis by rating, the effective date will be determined under 38 CFR 3.401(a).

d. **Discharge From Nursing Home.** Although there is a presumption that the disability which required placement in nursing home patient status will require the aid and attendance of another person despite discharge, continued entitlement must be based on a rating decision.

NOTE: This procedure is [equally] applicable to Section 306 or Old Law pension cases as [the] aid and attendance [rate is not protected when the person no longer has disabilities which meet the required rating criteria or, in the case of a Section 306 pension recipient, is not a patient in a nursing home.]

(1) Upon receipt of notice of discharge from nursing home patient status, the claimant will be promptly advised that:

(a) Entitlement to aid and attendance must be reconsidered because he or she no longer is a nursing home patient;

(b) Medical evidence establishing a factual need for regular aid and attendance must be furnished within 60 days from the date of the letter; and

(c) If evidence indicating a factual need for the regular aid and attendance of another person is not received within that time, payments will be reduced or terminated.

(2) To assist the claimant, the VA will attempt to obtain the necessary medical evidence directly from any sources which may be of record in the file. This may include a request for a medical report from the records of the nursing home from which the person was recently discharged. When this development is undertaken, the notice to the claimant should also advise that we have requested evidence on his or her behalf (naming the sources from which requested) but that it is the claimant's responsibility to see that it is received within the 60-day period. When medical evidence received establishes a reasonable probability of entitlement, but is not adequate for rating, a VA examination will be requested.

(3) The determination of eligibility to aid and attendance will be made under [38 CFR 3.351(c)(3) and 3.352(a)]. The rating in any denial of eligibility should reflect careful consideration as to whether the evidence clearly shows that the need for aid and attendance no longer exists taking into account factors such as age and the nature and extent of the disabilities which had required nursing home care.

(a) Award action to discontinue the aid and attendance allowance or to terminate payments will be taken without rating action when requested evidence is not received within the 60-day period provided or on the basis of a rating decision that the evidence does not establish entitlement to aid and attendance on a factual basis. Reduction or discontinuance in either case will be effective the 1st day of the month following the month in which the action is authorized ([38 CFR 3.105(f)].) A reduction or termination of benefits cannot be authorized until the claimant is given notification of the proposed action, including effective date, and the reasons therefor and allowed 30 days to submit additional evidence or request a hearing. (See par. [14.36b(1)].)

(b) Award adjustment will include the entry of code 0, Entitlement Terminated, in item "Aid and Attendance or Housebound" (par. 23.03b(4)).

24.16 ADJUSTMENT FOR LOSS OF DEPENDENT [ ]

Under the provisions of 38 U.S.C. 3012(b)(2) (38 CFR 3.660(a)(2)), the effective date of reduction or termination of compensation, DIC, [and Improved Pension cases], SOLELY because of the loss of a dependent by reason of marriage, annulment, divorce, or death, will [be] the last day of the [month] in which [the event] occurs.

[NOTE: The end-of-year rule still applies in Section 306 and Old Law cases and in other benefit programs in which the dependency loss occurred before October 1, 1982.]

a. **Applicable to Primary Awards Only.** The end-of-[month] rule on loss of a dependent applies only to adjustments of primary (veteran or surviving spouse) awards.

(1) An apportionee award to or for the "lost" dependent will be terminated effective the first day of the month of the apportionee's marriage, divorce or death (par. 26.13c).

(2) In DIC cases, termination of the additional separate award to a child attending school or a helpless child (over age 18) because of marriage or death has no effect on the surviving spouse's (primary) award.

b. **Reduction or Termination of Benefits Due to Loss of Dependent.** This rule applies only for determination of the effective date of a *reduction* or *termination* and is not for consideration when the loss of a dependent occurs before the benefit payable for this dependent has been awarded or when, by reason of such loss of a dependent not in custody, an increase would be payable.

(1) [**Loss of Spouse by Death, Divorce, or Annulment.** If the veteran loses a spouse by death, divorce, or annulment, reduction or termination of the veteran's award will be made effective the first day of the month following that in which the death, divorce, or annulment occurs.]

NOTE: For separations between a veteran and spouse, the "facts found" rather than "end of [month"] will determine effective date.

(2) **Child Dies or Marries.** Upon the death or marriage of a child for whom payment is included in the primary award, reduction or termination will be effective as of whichever is the earlier:

(a) [The first day] of the following [month] or the date of an earlier previously scheduled reduction or termination prior to the end of that [month], at the child's 18th birthday or school child's 23d birthday or scheduled termination of school attendance.

(b) When the entitlement is based upon the school attendance of a child who marries and continues in school, the benefit will continue to be payable to the end of the [month] or earlier scheduled date for termination of school attendance. However, if the child discontinued school attendance before [ ] marrying, reduction or termination will be the first day of the month following the day the child last attended school [(38 CFR 3.667(c))].

(3) [**Application of 38 CFR 3.551(b) and (c).** For an unscheduled loss of a dependent under Section 306 and Old Law, the provisions of paragraph 25.14c apply. For an unscheduled loss under Improved Pension, the veteran's pension will be subject to reduction to $60 the first day of the third (or fourth) month, as appropriate, following the month in which the veteran is without a dependent.]

(4) **Award Adjustment.** [ ]

(a) When the adjustment is made effective as of the end of [the month] enter the reduced rate (or "None") effective [the first] of the following [month], with the reduced dependency code. Reason code 56 (loss of dependent) will be used for this award line EXCEPT that if the lost dependent was a child, instead of reason code 56, the applicable reason code 24 (child under age 18), 25 (school child) or 54 (helpless child) will be used so that proper *automatic* adjustment will also be effected in the master record school/helpless counters in the end of the year processing. [ ]

(b) When the lost dependent is a child, in addition to using reason code 24, 25 or 54, the adjustment must also provide for indication in that child's birth segment status code for an automatic purge at the end of the year (par. 15.18). [ ]

c. **Loss of Dependent—Apportionee.** The provisions of the end-of-[month] rules are applicable to the *total amount* payable to both the veteran or surviving spouse as the primary beneficiary and the apportionee and not to only the specific monthly rate being paid under the primary award. Upon dependent's marriage, annulment, divorce, or death, the apportioned share awarded to or for such dependent is subject to termination as of the first day of the month of marriage [(38 CFR 3.500(n)(1))], divorce or annulment [(38 CFR 3.500(a))] or death [(38 CFR 3.500(g)(1))]. The primary award will be amended to reflect this loss of dependent and application of the end-of-[month] rule.

(1) If the lost dependent was the only apportionee, termination of the apportioned award will be effected by use of a [ ] stop award action, unless amended award action is otherwise required (par. 17.02c). The primary award will be amended to include the apportioned amount (and "this" dependency code) for the lost dependent (zeroing out the type 1 Withholding), from the effective date of termination of the apportionee award, with the applicable reduction or termination under the end-of-[month] rule effectuated as provided in subparagraph a above. If the lost dependent was a child, the award [action] will also include entry of the birth data for that child with the applicable status code 6, 7, 8 or 9.

(2) Continued apportionment to or for another dependent or dependents will be redetermined and the provisions of [38 CFR 3.451] applied as the circumstances require, considering the apportionment to be made from the *total* amount payable, including any additional amount payable for the lost dependent, to the appropriate effective date of reduction or termination under the end-of-[month] rule, with applicable birth data if the lost dependent was a child.

EXAMPLE 1: Veteran, rated 100 percent receiving [$1306] monthly. Apportioned award of $191 being paid to wife and five children, under Payee 10. Wife divorced [10-8-82]. [DLP 12-1-82.]

Payee 10 award [is adjusted to pay the children's (withholding) rate from the termination date, 10-1-82, to DLP.] Alternatives A and B illustrate respectively that the additional amount payable for the wife, [to the end of the month,] may be paid to either the apportionees or the veteran depending upon the equities demonstrated.

[ ]

Alternative A:

Payee 00—Amended Award:

DATE	RSN	RATE	EC	DISAB	DEPEN S H INC	SLC	WITHHOLD	DED-OFFSET
10-1-82	27	1307.00*	71	100	15/10	1	190.00	
11-1-82	56	1283.00*	71	100	85/00	1	140.00	

(additional futures as required)

**In order to pay a whole-dollar rate to each child ($38 vs $38.20 and $28 vs $28.40), the apportioned amount has been reduced and the additional money paid to the veteran.*

Payees 11, 12, 13, 14, 15—Original awards for 5C (Transactions 11F):

DATE	RSN	RATE	EC	DISAB	DEPEN S H INC	SLC	WITHHOLD	DED-OFFSET
12-1-82	00	28.00			15/81			

(additional futures as required)

Alternative B:

Payee 00—Amended Award:

DATE	RSN	RATE	EC	DISAB	DEPEN S H INC	SLC	WITHHOLD	DED-OFFSET
10-1-82	27	1357.00	71	100	15/10	1	140.00	
11-1-82	56	1283.00	71	100	85/00	1	140.00	

(additional futures as required)

Payees 11, 12, 13, 14, 15—Original awards for 5C (Transactions 11F):

DATE	RSN	RATE	EC	DISAB	DEPEN S H INC	SLC	WITHHOLD	DED-OFFSET
12-1-82	00	28.00			15/81			

(additional futures required)

EXAMPLE 2: Widow (Payee 10, dependency 12/11), with Child A born 9-6-66 in her custody, receiving DIC of [$502] (Pay Grade E-3) and Child B born 10-5-69 (Payee 11, dependency 12/81) receiving [$70] apportioned share.

Situation A: Child A (in custody) dies [10-12-82.] Adjustment:

[Payee 10 Award]

DATE	RSN	RATE	EC	DISAB	DEPEN S H INC	SLC	WITHHOLD	DED-OFFSET
11-1-82	24	451.00			11/10	1	70.00	
10-5-87	44	470.00			10/10	0	00.00	

Payee 11 Award

DATE	RSN	RATE	EC	DISAB	DEPEN S H INC	SLC	WITHHOLD	DED-OFFSET
11-1-82	44	70.00			11/81			
10-5-87	24	00.00						

Situation B: Child B (not in custody) dies [10-12-82], Adjustment:

Payee 11 Award

Terminate award [10-1-82,] reason code 22.

Payee 10 Award

DATE	RSN	RATE	EC	DISAB	DEPEN S H INC	SLC	WITHHOLD	DED-OFFSET
10-1-82	27	572.00			12/12	0	00.00	
11-1-82	24	521.00			11/11			
9-6-84	24	470.00			10/10			

d. **Retroactive Increase Involved.** When increased disability or decreased income requires award adjustment retroactively from a date prior to the loss of a dependent [ ] the veteran's surviving spouse will be paid the increased benefit including allowance for the lost dependent through the date of loss (e.g., date of dependent's death).

[e.] **Award Letters.** The payee will be advised by [award letter] with attachments, or dictated letter as appropriate, of the reduced benefits and the reason for the deferred effective date for reduction or termination.

[ ]

24.17 ANNUAL CLOTHING ALLOWANCE

a. **General**

(1) An annual clothing allowance is payable, upon application under 38 U.S.C. 362, to each veteran who is entitled to

receive compensation for a service-connected disability [or for a disability compensable under 38 U.S.C. 351 as if service connected which requires that] he/she wears or uses a prosthetic or orthopedic appliance which is determined to wear out or tear clothing. (See 38 CFR 3.810.)

(2) Any communication from a veteran describing the appliance required to be worn or used because of the service-connected compensable disability and requesting payment of the clothing allowance will be considered a claim for this benefit.

(3) For adjudicative purposes, certain prosthetic or orthopedic appliances are presumed to wear out or tear clothing when used because of a service-connected anatomical loss or loss of use of a hand or foot. In such cases, continuing eligibility for subsequent payments is considered to be established so as to permit recurring annual payments without a supplemental claim.

b. Annual Clothing Allowance Payment

(1) An ACAP (Annual Clothing Allowance Payment) will be made to veterans with existing eligibility on August 1, 1972, or on any subsequent August 1.

(a) Each ACAP payment requires entitlement on August 1 of each year for which payment is made.

(b) Thus, a veteran determined eligible as of August 1, 1979, is entitled to receive ACAP 1979.

(2) The processing of an authorization of payment of a current or future ACAP will establish the C&P master record code to provide for authorized recurring annual payments or for a computer-generated letter/application to permit development of entitlement for a subsequent ACAP. (See subpar. j below, re annual CAP computer run.)

(3) The pay date for authorized recurring annual clothing allowance payments based on prior recorded master record data will be the first of September immediately following each August 1.

c. Applications For Clothing Allowance

(1) When a rating decision is processed which initially establishes service connection for anatomical loss or loss of use of a hand or foot, the veteran will be informed of potential eligibility for the clothing allowance and furnished VA Form 21-8678, Application for Annual Clothing Allowance, for completion and return.

(2) When veterans with potential eligibility are identified by Prosthetics representatives, an application for clothing allowance will be obtained and forwarded to the Adjudication Division along with the medical determination (see subpar. e below).

d. Determination of Entitlement By Adjudication

(1) All claims for clothing allowance will be received in the Adjudication Division with the claims folder. Control of pending claims by end product code and final disposition in all cases will be by the Adjudication Division. Authorization activity personnel will establish and authorize initial and *recurring* entitlement to payment for the current or next ACAP as appropriate, without need for referral to the outpatient clinic, under the following criteria:

(a) The disability is a service-connected anatomical loss or loss of use of a hand or foot, and

(b) Veteran certifies that because of that disability, he/she wears or uses an artificial limb, rigid extremity brace, a wheelchair, or crutches, and

(c) The veteran is in receipt of or has current entitlement under a formal rating to compensation for such disability on August 1 of the year for which payment is to be made, and

(d) The use of the prosthetic or orthopedic appliance is not contradicted by medical evidence of record.

(2) Eligibility in claims based on other service-connected compensable disabilities and/or other devices or appliances and in cases of contradictory medical evidence of usage will require request to the outpatient clinic for determination by the designee of the clinic Director (subpar. e below).

(3) It is not necessary for a veteran in receipt of retired pay to waive any portion of retired pay in order to receive the clothing allowance nor is there a prohibition against payment of clothing allowance to a hospitalized veteran (competent or incompetent) who is found otherwise entitled. [The provisions of 38 CFR 3.557] [do] not apply to payment of clothing allowance.

NOTE: If an application for clothing allowance has been received but a claim for compensation has not been filed, VA Form 21-526, Veteran's Application for Compensation or Pension, will be forwarded to the claimant. The veteran will be informed that eligibility to compensation must be established before the application for clothing allowance may be considered.

e. Request for Outpatient Clinic Determination

(1) When eligibility cannot be determined by the Authorization activity under subparagraph d above, [prepare] VA Form 21-8679, Eligibility Determination for Clothing Allowance, [ ] (in duplicate) to identify the claimant and to indicate the prosthetic appliance at issue. Furnish Vet's address with request.

(a) [Route] the original [ ] to the outpatient clinic of jurisdiction and [retain] the duplicate [ ] as the claims folder copy under pending issue control.

(b) The medical determination will be entered in part I of VA Form 21-8679 and the form returned to Adjudication Division for approval or disallowance of the claim.

(2) When possible, the medical determination will include comment that the continued use of the device is recommended. This will permit authorization of the initial payment and recurring payments as in cases authorized under subparagraph d, without necessity for a supplemental claim or input. Other cases will require notation that the condition requiring use of the device is not static. Such medical determination will permit authorization and payment of an allowance for the specific year, with subsequent payments subject to reestablishment of eligibility or an affirmative decision of permanence.

f. Processing for Payment

(1) **Entitled for Current ACAP.** Computer payment on an award of initial entitlement (or a redetermination of entitlement) to ACAP for each year will be made September 1 of that year or upon the processing of the clothing allowance transaction, whichever is later.

(2) **Initial Entitlement for Subsequent Year ACAP.** Claims may be received in cases in which the veteran is not eligible for the current year payment; that is, entitlement effective after August 1 of the current year.

(a) In such cases, eligibility for initial payment for the *next* ACAP may be established under criteria of subparagraph d or based on medical determination pursuant to subparagraph e.

(b) VA Form 21-8679 will be input to provide computer identification and payment September 1 of the year authorized and to provide for subsequent payments on a recurring basis or issuance of a computer-generated letter/application for redetermination, as appropriate.

(3) **Redetermination of Eligibility.** Master records set to require annual redetermination of eligibility will be identified as of the end of July for issuance of a computer-generated letter/application for completion by the veteran and return to Adjudication Division for appropriate action.

(a) Payment of the current year clothing allowance will be dependent upon receipt of the application and favorable determination of eligibility on August 1 of the same year.

(b) No control will be maintained for receipt of the completed application. (See subpar. j below.)

NOTE: Authorization of clothing allowance to veterans who are not in receipt of compensation because they are receiving retired pay (or other reason) and for whom a type A master record does not exist, can be made only for the current annual payment, not on a recurring basis. If continuing eligibility is established on a factual basis, payment of the next and succeeding ACAP's may be made upon ascertaining the veteran's current address. A redetermination of eligibility on the basis of the subsequent claim will NOT be required if the initial approval was based on a static qualifying disability. Local control will be maintained for the appropriate action as of August 1 of the next year. (See Exception 1, subpar. h below.)

g. **Preparation of Awards and Disallowances.** In all cases, authorization of approval (initial or redetermined), and terminations or disallowances will be made by completion of part II, VA Form 21-8679 by an adjudicator for approval by an authorizer.

(1) **Awards.** Block 1, "Entitlement is established for annual clothing allowance," will be checked and completed to show the year of the August 1 date of eligibility. The applicable block a through d will then be checked as follows:

(a) If immediate payment of *current year* ACAP, is in order, block a or b, as appropriate, will be checked as follows:

1. Check block a, "PAY NOW — Eligibility is considered to be continuing," to provide annual payments on a recurring basis; or block b, "Future eligibility must be authorized," to generate a letter/application for release to the veteran to reestablish eligibility when the next clothing allowance payment becomes due.

2. The Input activity will complete section I, part III of the form to input an 06K, Clothing Allowance transaction for immediate payment of the current ACAP (two-digit pay year code) with the appropriate code (1 —Recurring, or 2 — Futures to be authorized) for future computer action.

(b) In cases of initial entitlement commencing with the *next annual payment,* block c or d, as appropriate, will be completed to authorize the establishment of the appropriate master record control for future payment, as follows:

1. Block c to indicate approval for the next annual payment with continuing eligibility, or block d to indicate approval for the initial (next) payment with the requirement for a computer-generated letter/application for any subsequent year.

2. Input activity will complete section II, part III to input transaction 02M (code 3 or 4, as appropriate) not earlier than cycle 0 September of the calendar year prior to the August 1 date of ACAP entitlement to set up the appropriate future payment condition.

3. It is imperative that no 06K transaction awards for a future processing year be processed until after the last cycle of August. This is mandatory since the system is programmed to carry the current payment year through the last cycle of August. If a clothing allowance award based on future eligibility is input before or during the last cycle of August, payment would occur at an erroneous rate (i.e., eligibility established from August 1, [1985] must not be processed prior to cycle 0 of September [1985]).

(c) [Refer] claims authorized for immediate or next annual payment [ ] to the Input activity with the claims folder for completion of part III as stated above and processing of the required transaction. The completed form will be filed on the inside left flap (award section) of the claims folder as an award document.

(2) **Initial ACAP for 2 or More Years.** Block 1 (and appropriate block a or b) in part II will be checked and years of each August 1 entitlement entered (e.g., ["1984] and [1985")]. The Input activity will then transmit *separate 06K transactions* for each ACAP year as required above for input in *successive* batches.

(3) **Terminations.** Termination of eligibility previously established will be indicated by use of block 2, part II when a veteran becomes ineligible to receive the annual allowance because of medical determination or other reason. The claims folder will be referred to the Input activity for completion of section 2, part III, to input transaction 02M (code 5) to blank out the master record clothing allowance codes and file the form on the inside flap of the claims folder.

(4) **Disallowances.** Disallowances may be made in cases as required by medical determination or in any case in which there are only nonservice-connected disabilities or no compensable service-connected disabilities, by completion of block 3, part II. [File] this noneligibility determination [ ] on the inside left flap of the claims folder without any input transaction, since these denials are not master record data.

(5) **Philippine Cases.** Claims authorized for veterans of the U.S. Army and Regular Scouts will be paid in dollars. Persons who enlisted under section 14, Public Law 190, 79th Congress (Act of October 6, 1945) (Other Philippine Scouts, Commonwealth Army of the Philippines, Guerrilla Service) are to be paid at a rate in Philippine pesos equivalent to $.50 for each dollar authorized under the law. Payment will be made through the Manila Treasury Disbursing Office.

(a) Unlike all other stations, Manila will process 02M transactions 1 and 2 on VA Form 20-6889 Correction Code Sheet, to record "immediate" payments.

(b) "Pay Next Year" 02M transactions 3 and 4 will also be processed on VA Form 20-6889.

(c) All 02M transactions to record immediate or next year payment will be accompanied by an additional 02M transaction to update the pay year field.

h. **Notice to Veteran.** Each ACAP check issued will contain the purpose "VA CLOTHING" to identify the benefit paid and, accordingly, a letter will not generally be required if immediate payment for a *current* ACAP is authorized under block 1a or b, part II.

EXCEPTION 1: As provided in NOTE to subparagraph f(3) above, in any case in which there is no type A master record, a dictated (or pattern) letter must be prepared to advise the veteran of each payment and that to receive the next annual payment, the claim form which will be furnished on or about the following August 1 must be completed and returned.

EXCEPTION 2: When a *next* annual payment is authorized (block 1c or d checked), or in cases of a termination or disallowance, the Authorization activity will notify the veteran of the decision by letter.

i. **Returned Checks.** A returned clothing allowance check will result in issuance of Msg Code 607, MISC. RETURNED CHECKS, to the Finance activity for appropriate action. However, data for such returned check will not be retained in the master record. As no proceeds segment will be established, a new 06K transaction will be required to make payment.

j. **Annual CAP Computer Run.** The master record data established, as stated in subparagraph b(2), to provide for recurring annual payments or for a future computer-generated letter/application will be utilized in a two-phase ACAP Selection Run of the master records. As of the end of July, cases requiring redetermination of eligibility will be selected for issuance of a generated letter/application. Cases in which the master record data provide for recurring annual payments and those "Pay Next Year" coded for this ACAP will be selected as of end of August for a September 1 payment for the current year.

(1) When the master record in a selected case contains no address (record purpose only award), Msg Code 777 — CLOTHING ALLOWANCE DUE — NO ADDRESS IN M/R, or Msg Code 777C — RELEASE CLOTHING ALLOWANCE APPLICATION, will issue in lieu of automatic payment or a generated letter/application. These cases will require input of an 06K transaction to effect payment.

(2) Manila cases (station numbers 58 and 69 only) will be included in the ACAP Selection Run *only* for identification purposes. Msg code 777A — CLOTHING ALLOWANCE DUE — MANILA, or Msg Code 777D — RELEASE CLOTHING ALLOWANCE APPLICATION — MANILA, as appropriate, will issue to identify them for processing of a payment transaction or release of a clothing allowance letter/application locally produced.

NOTE: A TR 02M, code 1 (eligibility continuing) or code 2 (when future eligibility must be authorized) will be input to F.I. 017 to set the control in the Hines no-pay record for the next ACAP first-phase run.

(3) In any case in which payment of an annual clothing allowance is made but the master record does not indicate any service-connected disability, Msg Code 777B — CLOTHING ALLOWANCE PAID — NO S/C DISABILITY, will be issued for review as to the propriety of the payment and any necessary input, including correction of service-connected diagnostic codes (field 101).

(4) In certain cases, payment of the ACAP may be due but payment is not possible based upon the status of the case. Msg Code 777E — CL ALLOW DUE — M/R SUSPENDED, will be issued in those cases when payment may not be made because the record is in a suspense status. Msg Code 777F will be issued at end-of-month July when the application was not released or input to update the record and make payment. Msg Code 777F may also be issued at end-of-month August when the automatic annual payments have been interrupted without resumption.

k. **Notice of Disagreement or Substantive Appeal.** The following procedures are applicable to notices of disagreement or substantive appeals taken from the denial of claims for annual clothing allowance under 38 U.S.C. 362:

(1) The Adjudication Division will be responsible for furnishing the statement of the case and certification of appeal arising from Authorization activity decisions denying or terminating eligibility on the basis of no compensable service-connected conditions or only nonservice-connected disabilities, or in cases involving an issue of effective date of entitlement.

(2) When a notice of disagreement or substantive appeal arises from a medical determination (VA Form 21-8679, part I, [transfer] the claims folder [ ] to the outpatient clinic of jurisdiction for their preparation of the statement of the case.

(a) The claims folder and statement of the case will be returned to the Adjudication Division for release of the statement of the case to the veteran.

(b) If a substantive appeal is filed, [forward] the claims folder [ ] to the outpatient clinic of jurisdication for processing and certification of appeal.

(c) The claims folder and completed VA Form 1-8, Certification of Appeal, will be returned to the regional office Administrative activity for recording and forwarding to the Board of Veterans Appeals.

l. **Accrued Clothing Allowance.** The lump-sum clothing allowance is due and payable in the case of a veteran meeting the eligibility requirements as of the August 1 date prior to death, based on rating decision or evidence in file at date of death. The full lump sum is payable without pro rata accumulation for any portion of a year. Payment of this accrued will be governed by the provisions of chapter 37, subchapter II, section A, as an accrued based on relationship, and subchapter III when payable as reimbursement. ([38 CFR 3.1000(h)])

24.18 DISABILITY COMPENSATION FOR PAIRED EXTREMITY (38 U.S.C. 314(t))

Under the provisions of 38 U.S.C. 314(t), a special monthly compensation is payable to any veteran rated less than 100 percent disabled who has a service-connected loss or loss of use of a hand or a foot rated at least 40 percent disabling and has suffered the loss or loss of use of the paired extremity as the result of nonservice-connected disability, not the result of willful misconduct. (See ch. 29, subch. IX, re awards subject to offset; par. 50.41 re rating procedures; and [38 CFR 3.350(f)(5).])

24.19 VETERAN-MARRIED-TO-VETERAN CASES—GENERAL

Payment in Improved Pension veteran-married-to-veteran cases will be made under one combined award unless one spouse requests separate payment, multiple special monthly pension benefits are to be paid (see par. 23.03b(5) NOTE), the housebound allowance is granted to a spouse when the combined award is being paid under the other veteran's file number, or a Medal of Honor grant is involved. The maximum rates payable in these cases are established by [38 CFR 3.23(a)(4).]

a. **Combined Payment.** Either file number may be used to establish this award except in original or reopened cases when one spouse has entitlement to the aid and attendance, housebound, or World War I or Mexican border period allowance. In those cases, the award will be established under the file number of the veteran with entitlement to this special benefit. The combined award will be made with the first award line containing the names of both veterans. The entitlement code of the veteran under whose file number the claim is being established will be for use. Jurisdiction of the two folders will remain in the same office as long as a combined payment is made, and the provisions of paragraph 2.03d(1) concerning cross-referencing the folders are for application.

b. **Separate Awards.** The folders will be cross-referenced and the claimants informed that all benefits (including additional benefits for children or special monthly pension(s) have been equally divided.

EXAMPLE: Veteran A is a WW I veteran, married to Veteran B who has entitlement to the Housebound allowance. Combined IVAP is $5,000 and separate checks have been requested.

Maximum H/B Rate	[$8,747] [$1,289]
WW I Additional Amount	+ $1,245 [$10,036] maximum payable
	− $5,000 IVAP
	[$5,036 ÷ 2 = 2518 ÷ 12 = 209.83]

Veterans A's Award	Veterans B's Award
[$209.00 per month effective 12-1-84.]	[$209 per month effective 12-1-84.]

CHAPTER 25. HOSPITALIZATION OF COMPETENT VETERANS

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CHAPTER 25. HOSPITALIZATION OF COMPETENT VETERANS

SUBCHAPTER I. NOTIFICATIONS FROM AND TO INSTITUTIONS

25.01 GENERAL–USE OF VA FORM 10-7131, EXCHANGE OF BENEFICIARY INFORMATION AND REQUEST FOR ADMINISTRATIVE AND ADJUDICATIVE ACTION

VA Form 10-7131 is designed for use by VA medical centers [and outpatient clinics] and by regional offices for the exchange of information or to request administrative and adjudicative action relating to or required by a veteran's status when he/she is applying for or receiving hospitalization, domiciliary care, nursing home care or other medical services. Exchange between these departments must be timely, adequate, and appropriate.

a. **Combination Use.** This form can be used as a notice of admission of a veteran as a patient in a VA or non-VA hospital, [nursing home] or domiciliary; as a request for information to determine a veteran's eligibility for admission or treatment; assignment of a file number with adjudicative action; or any combination of these.

b. **Notice of Entrance.** VA Form 10-7131 (original and 2 copies) will be furnished, with part I prepared by medical centers, to the regional office of jurisdiction, upon the entry of a veteran into a VA medical center or non-VA institution as a VA beneficiary who:

(1) [Is admitted for treatment of an established service-connected disability or for a condition the veteran alleges is service-connected] ; or

(2) Is in receipt of [ ] pension, [compensation, reserve officers, or emergency officers' retirement pay from the VA] ; or

(3) Has a claim for compensation or pension pending at time of admission; or

(4) Is admitted for observation and [examination only, at the request of Adjudication Division] ; or

[(5) Is admitted or transferred to the nursing home section of the State veterans' home or to a VA nursing home care unit and is in receipt of pension, compensation, reserve officers or emergency officers' retirement pay from the VA; or

(6) Is a service-connected veteran admitted directly to a community nursing home for nursing home care at VA expenses under 38 U.S.C. 620.]

c. **Requests for Eligibility Data.** For action required when part I is completed only to request data for determination of eligibility for hospital, domiciliary and medical care, see paragraphs 30.01 and 30.02.

d. **Veteran-Patient Identification.** The heading block of VA Form 10-7131 will identify the veteran, the DM&S facility submitting the form and the date of admission when applicable.

e. **Admission Diagnosis.** The admission diagnosis will have been entered in part I, item 7, when a notice of admission is submitted for:

(1) A veteran admitted for treatment of an established service-connected condition or for a condition the veteran alleges is service connected;

(2) Any veteran admitted for treatment of Hansen's disease; or

(3) Any veteran admitted for observation and examination [at the request of an Adjudication Division.]

f. **Processing of VA Form 10-7131 Showing Positive Tuberculin Reaction.** See paragraph 30.05.

25.02 ACTION BY ADJUDICATION DIVISION WHEN VA FORM 10-7131 IS AN ADMISSION NOTICE

When VA Form 10-7131 is used as a notice of admission, part I (applicable items 1 through 7) of the form will have been completed to furnish information necessary for determination of adjudication action required because of hospitalization. Part II–[ ], will be completed in the Adjudication Division [(see par. 1.20b(5))] to furnish the information requested by DM&S facility in part I. Part III–Request, will also be completed as provided in subparagraph b below.

a. **Initial Determinations by Adjudication Division.** Upon receipt of VA Form 10-7131 submitted as an admission notice, development/data entry clerks will review the claims folder to determine what actions and what reports, if any, are required. When the admission diagnosis shows a disability for which service connection has been severed or denied, the VA medical facility will be promptly informed of the severance or denial by VA Form 10-7131 so annotated in "Remarks." (Par. 25.09[e]) The analysis will determine the following facts:

(1) Is veteran incompetent [and is the award subject to reduction under 38 CFR 3.557?] (See par. 28.06.)

[ ]

(2) Is entitlement to aid and attendance involved?

(a) Is award subject to reduction under [38 CFR 3.552]?–see subchapter III, this chapter.

(b) Is there a claim for aid and attendance? If so, request VA Form 21-2680 (item 7, pt. III, VA Form 10-7131).

(3) Is award subject to reduction under [38 CFR 3.551]?–see subchapter II, this chapter.

(4) Is treatment for a service-connected disability and is the veteran evaluated at less than 100 percent?–see subchapter IV, this chapter.

(5) Is any hospital report required under subparagraph b below?–The following guidelines will be observed in requesting data listed in part III of VA Form 10-7131:

(a) [ ] Only those hospital reports which are absolutely essential in the consideration of a claim will be requested. Adjudication personnel will not, for example, request both a special report and a hospital summary, if all rating issues may be disposed of with a special report alone.

(b) Whenever part III, item 4 (Examination of Conditions Listed in Remarks) or 5 (Special Report) is checked, it is necessary that additional information be furnished in "Remarks." It is essential that the exact information requested be identified or the data supplied by the medical center or other facility may be delayed or incomplete.

(c) Only the items specified in part III of VA Form 10-7131 may be obtained through the use of this form. Interim summaries will not be requested.

b. **Explanation of Use of Items on Part III, VA Form 10-7131**

(1) **Item 1, "VA Form 10-7132."** This item will be checked to indicate need for a report on VA Form 10-7132 of any change in the veteran's patient status, under any of the following circumstances:

(a) [ ] Pension in excess of $60 monthly [is being received by a veteran without a dependent spouse or child.]

(b) Veteran was receiving additional allowance of pension or compensation for aid and attendance at time of admission.

(c) Veteran is incompetent, subject to 38 CFR 3.557 discontinuance, and benefits are being paid, or have been discontinued because the veteran's estate is over $1,500, and a resumption of the award may be in order upon release from the VA medical center. (See subpar. (8) below.)

(d) If item 2 or 3 is checked.

(2) **Item 2, "Hospital Summary."** This item (and item 1) will be checked whenever a hospital summary at discharge is required; that is, when:

(a) The admission diagnosis on VA Form 10-7131 shows a service-connected disability.

(b) The veteran is in receipt of aid and attendance and a future examination is scheduled due to the existence of conditions subject to improvement. (See par. 25.18.)

(c) A claim for pension requiring rating action or claim for compensation is pending (but see subpar. (5)(a) and (d) below).

(d) A future examination has been scheduled (but see par. 55.06 re unnecessary examinations).

(e) Item 3 is checked, or if item 5 is checked and "Remarks" completed to require a hospital report in a specific number of days.

(f) A review of the competency status upon discharge or transfer is desired in any case in which the veteran is entitled to compensation or pension. (See par. 28.06.)

(3) **Item 3, "21-Day Certificate."** This item (and items 1 and 2) will be checked whenever the admission diagnosis on VA Form 10-7131 shows a service-connected disability and the veteran is currently rated at less than 100 percent (see par. 25.22).

(4) **Item 4, "Examination of Conditions Listed in Remarks."** This item will be checked and the condition(s) for which examination is requested entered in "Remarks" when an immediate hospital report covering certain conditions is necessary. For example, this item is for completion when the veteran is hospitalized for a nonservice-connected condition and a physical examination for a service-connected condition is pending or there is a claim pending for an increased rating for a service-connected condition. (See subpar. c(1) below.)

(5) **Item 5, "Special Report."** Whenever this item is checked, the reason for requesting a special report must be given in "Remarks." The specific disability, anatomical system or part of the body on which the report is desired should also be included in "Remarks.' Item 5 will be checked under any of the following circumstances:

(a) In a pending claim, reopened claim or claim for increase, when it appears that the veteran is suffering from a terminal illness, a hardship exists, or a lengthy period of hospitalization is indicated.

(b) Hospital report received is inadequate for rating purposes, and in the opinion of the rating board, the hospital clinical records folder would contain specific data adequate for rating the claim. (See par. 55.03.)

(c) In conjunction with items 1 and 2, when a hospital report is required in a specific number of days. Generally, this will occur when a veteran is totally disabled but permanency for pension purposes has not been established and a hospital report is desired in 90 or 180 days. Except for such cases, both items 2 and 5 will not be checked unless it is necessary to have both a special report and a hospital summary.

(d) In any case in which a special report not otherwise covered herein is required. For example, VA Form 21-8045, Report on Hospitalized Incompetent Veteran (Housebound Case), is desired for rating purposes. Another example when this item would be checked is in a death case to request an autopsy report.

(6) **Item 6, "Competency Report."** Information as to competency will normally be included in all hospital reports whenever the veteran receives treatment for any mental condition. However, this item will be checked when a report of competency is required and the facts in the case indicate that the veteran is being treated for other than a mental condition.

(7) **Item 7, "VA Form 21-2680."** This item will be checked whenever a claim for regular aid and attendance and/or housebound benefits is filed and an immediate report is necessary. (See also par. 25.04b.)

(8) **Item 8, "Asset Information."** This item will be checked whenever there is an incompetent veteran without a spouse or child established of record, and an award of pension or compensation is being paid or may be payable on behalf of the veteran. (See also pars. 25.04d and 28.06b(3).)

(9) **Item 9, "Admission Report."** This item will be checked only when data are needed soon after admission for long term treatment, such as for psychiatric disability or tuberculosis. An admission report may be used for evaluation of disability or determination of competency. Copies of pertinent portions of the medical record, such as history, physical examination, psychiatric evaluation, pulmonary function studies, x-ray interpretations or progress notes will be furnished.

(10) **Item 10, "Outpatient Treatment Report From _____ To _____ ."** This item will be checked only to request a report of treatment furnished at an outpatient activity. It will not be used for discharge followup reports. If such information is required, item 5 (Special Report) should be checked and an explanation given in "Remarks."

(11) **Remarks.** Appropriate notations will be made in part II, item 10, "Remarks," to supply additional information not provided for by printed items on the form.

c. **Disposition of VA Form 10-7131**

(1) **Referral to Rating Board.** The case will be referred to the rating board for a determination as to whether an examination is unnecessary (see par. 55.10), prior to any other action, when the admission is not for a service-connected disability, but the veteran has a service-connected disability for which an examination is pending completion in the outpatient clinic; or when a physical examination is due within the next 90 days.

(2) **Completion and Return Required.** If analysis shows that reports from the hospital will be required, the proper items in part III of VA Form 10-7131 will be checked. The original of the completed form will be returned, one copy filed in the claims folder and the third and fourth copies may be destroyed as duplicate material in accordance with Records Control Shedule VB-1, part I, item [13-052.100].

(3) **No Action Required.** When VA Form 10-7131 is to be filed with no action required (see par. 1.08), only the original will be filed in the claims folder and the copies destroyed as duplicate material in accordance with Records Control Schedule VB-1, part I, [item 13-052.100].

NOTE: Send one copy of VA Form 10-7131 to the Veterans Services Division if the veteran is incompetent by court decree or by VA rating and there is a fiduciary (including spouse-payee or an institutional award) or supervised direct pay has been approved.

[25.02.1 ACTION BY ADJUDICATION DIVISION WHEN VA FORM 10-7131 IS A REQUEST FOR A NET WORTH DECISION (MEANS TEST)

Public Law 99-272 effective July 1, 1986, establishes an income test and an income plus net worth test for determining the eligibility of certain veterans for treatment for a nonservice-connected disability.

a. **Entitlement.** A veteran, whose income plus net worth is in excess of the applicable limits, is entitled to treatment for a nonservice-connected disability only if the veteran agrees to pay an amount not to exceed the hospital medicare deductible. The treating health care facility will make all income determinations and the regional office of jurisdiction will make any required net worth determination.

b. **Use of VA Form 10-7131.** When VA Form 10-7131 is used by the treating health care facility as a request to the regional office to furnish a net worth determination for veterans without service-connected disabilities who are not other-

wise exempted, e.g., former POW's, Authorization will make a determination whether or not net worth is a bar to mandatory hospital care or permissive hospital care and nursing home care without copayment.

c. Determination by Treating Health Care Facility

(1) The treating health care facility makes all income determinations. If a veteran's income exceeds [$21,111] with no dependents; [$26,389] with one dependent, with an additional [$1,055] for dependents in excess of one, the veteran must agree to pay all applicable copayments for VA care (rates to be adjusted each year). [ ] These cases should not be referred to the regional office.

(2) In those instances when the reported income is under these amounts, but the income plus net worth exceeds $40,000, the Authorization section shall make the net worth determination.

d. Development by Treating Medical Facility

(1) The treating medical facility develops the information needed to make a net worth decision and maintains all record copies of the required forms in the veteran's medical folder. Only in a limited number of cases such as those involving farm property should the regional office assist in developing evidence for a net worth decision.

(2) The treating medical facility shall ask the veteran to complete VA Form 10-10E, Financial Worksheet, and VA Form 21-8049, Request for Details of Expenses. The treating medical facility will send a copy of the completed forms to the regional office of jurisdiction attached to a VA Form 10-7131. The statement "Net Worth Determination for Medical Care" will be annotated in part I, item 6, of VA Form 10-7131.

e. Net Worth Determination by Adjudication Division

(1) Upon receipt of VA Form 10-7131 requesting a net worth decision, Authorization shall make a net worth determination under paragraphs 9.04 and 9.27.

(2) The veteran's net worth includes the net worth of the veteran's spouse and dependent children, if any.

(3) In all properly referred cases, Authorization completes VA Form 21-5427, Corpus of Estate Determination, and indicates in item 13 that "Net Worth IS A BAR" or "Net Worth IS NOT A BAR", and returns the forms (VA Forms 10-10E, 21-5427 and 21-8049) to the treating health care facility attached to a copy of the VA Form 10-7131.

(4) If development is not adequate to make a decision or if income alone is excessive, do not make a net worth determination. Do not establish a claims folder for these claimants. Return the claim to the health care facility of jurisdiction for action.

(5) It is optional for Authorization to maintain a record if net worth is not a bar. However, if net worth is a bar, Authorization shall maintain a copy of the decision and the supporting evidence in a holding file for 1 year in order to process an appeal of an unfavorable net worth determination. After 1 year, this holding file will be disposed of in accordance with RCS VB-1, part 1, item No. 13-052.100.

f. Notice of Determination

(1) If the authorizer determines that net worth is a bar, Authorization shall inform the veteran by letter of the decision that net worth is a bar to medical care without participatory payment. The Authorization section shall provide procedural and appellate rights under M21-1, paragraph 16.08.

(2) Authorization shall send to the treating health care facility a copy of this letter and all supporting evidence with the completed VA Form 21-5427.

(3) For veterans who reapply for medical care, net worth determinations, if favorable to the veteran, are valid for 1 year unless evidence of record indicates the veteran's income or net worth has changed significantly.

25.03 ACTIONS BY HOSPITAL OR DOMICILIARY UPON RECEIPT OF VA FORM 10-7131 WITH PART III COMPLETED

When VA Form 10-7131 is returned with part III completed, the Chief of Medical Administration Service will establish necessary controls to insure timely submission of the information requested as provided under DM&S directives and this manual.

25.04 REPORTS SUBMITTED BY HOSPITALS OR DOMICILIARIES WITHOUT REQUESTS FROM THE ADJUDICATION DIVISION

Under the following conditions, the Chief of Medical Administration Service will initiate, without a specific request from the Adjudication Division, reports of:

a. **Change in Hospital Status.** Whenever VA Form 10-7131, part III, item 1 (VA Form 10-7132), is checked, VA Form 10-7132 will be dispatched within 24 hours following the veteran's departure on, or return from Non-Bed Care or authorized absence of 30 days or more. In addition, VA Form 10-7132 will be submitted within 24 hours of discharge and will include a report of all periods of Non-Bed Care and authorized absences, regardless of the length of such periods of absence.

b. **Condition Warranting Consideration of Aid and Attendance Allowance or Housebound Benefits.** Whenever the hospital staff considers that the veteran might be entitled to aid and attendance, a VA Form 21-2680, Examination of Housebound Status or Permanent Need for Regular Aid and Attendance, will be submitted. This action will be initiated as quickly as possible as the veteran may become entitled to the Housebound rate while hospitalized. (See also par. 25.21.)

(1) In the case of a veteran who is 100 percent disabled by reason of a service-connected disability or is rated permanently and totally disabled for pension purposes, a supplemental report will be furnished if, in the opinion of the staff physicians, the veteran's condition has regressed to the point where he/she might qualify for aid and attendance or the housebound benefits.

(2) In the case of an incompetent veteran, such supplemental report will be submitted on VA Form 21-8045, Report on Hospitalized Incompetent Veteran (Housebound Case).

c. **Hemodialysis Admissions.** Veterans admitted to VA medical centers for regular hemodialysis treatments are considered as inpatients for each visit. Such admissions are not the equivalent of "hospitalized" or "hospitalization" for adjudication purposes and VA Form 10-7131 will not be submitted by the medical center to cover such admission.

(1) If, during treatment, the veteran's condition necessitates retention in a bed-care status beyond the period ordinarily needed for a routine hemodialysis treatment, VA Form 10-7131 will be furnished by the medical center as provided in paragraph 25.01.

(2) When a veteran who has been receiving inpatient hospital care is discharged with instructions to return regularly for hemodialysis treatments, a hospital summary or VA Form 10-7132, if previously requested by Adjudication, will include "Patient will return for Hemodialysis treatment _____ times a week."

d. **Change in Assets.** Following submission of asset information in response to item 8, part III, VA Form 10-7131, VA Form 10-7132 will also be submitted showing asset information:

(1) When a change in assets, other than those acquired through VA benefits, occurs.

(2) Whenever there is knowledge that an incompetent veteran's estate equals or exceeds $1,500.

(3) If the award has been discontinued because the estate was over $1,500, when the estate is reduced to $500 or less.

(4) Whenever an incompetent veteran's discharge from the medical center is contemplated. (See also par. 28.14.)

e. **Change in Competency Status.** Reports will be furnished to inform the Adjudication Division of competency status changes whenever a veteran is in receipt of compensation, pension, or retirement pay, or there is a claim pending. [ ] Reports will be submitted if the veteran is rated competent but medical opinion indicates incompetency or conversely, when the veteran is rated incompetent and, in the opinion of the staff physicians, he or she is competent.

f. **Change in Treatment Status.** When the veteran entered the medical center for a service-connected disability and VA Form 10-7131, part III, item 3 (21-Day Certificate), had been checked by the Adjudication Division, if treatment for such service-connected disability terminates but the veteran remains hospitalized for treatment of a nonservice-connected disability, an interim hospital report showing the termination of the service-connected treatment will be submitted.

25.05 PREPARATION OF SUPPLEMENTAL VA FORMS 10-7131 BY HOSPITALS

a. **Purpose.** Supplemental VA Forms 10-7131 will be prepared and forwarded to the Adjudication Division to report changes in the treatment status of a veteran which occur after the initial notice of admission. These supplemental VA Forms 10-7131 will

not be required when treatment is changed from one nonservice-connected disability to another nonservice-connected disability. (See par. 25.04f re VA Form 10-7132 notice in such instance.)

b. **Procedure.** Supplemental VA Forms 10-7131 will be so identified in part I. Upon receipt of a supplemental VA Form 10-7131 in the Adjudication Division, [it] will be carefully analyzed and action taken in the same manner as if this were an initial VA Form 10-7131, except as provided in paragraph 25.24c. (See also par. 25.22c.)

25.06 INITIATION OF VA FORM 10-7131 BY ADJUDICATION DIVISION

If a veteran who does not have or allege a service-connected disability, is not in receipt of pension or retirement pay, and has no claim pending, enters a VA or non-VA institution as a VA beneficiary, a VA Form 10-7131 will not be submitted as a notice of admission.

a. If subsequent to [ ] admission the veteran files a claim for [ ] benefits, the Adjudication Division will initiate VA Form 10-7131, checking the proper items in part II of the form.

b. After a VA Form 10-7131 furnished by an institution has been completed and returned, a new VA Form 10-7131 will be initiated and sent to the institution if it is found that additional information listed in part III of the form is required. The original of the form will be sent to the [Chief of Medical Administration Service] and a copy filed in the claim folder. (See also pars. 22.03b, 25.08d(1)(b), 38.06[b] and 28.14b.)

25.07 USE OF VA FORM 10-7132, STATUS CHANGE

a. **General.** VA Form 10-7132 will be used to furnish information of patient status change to the Adjudication activity (par. 25.04). VA Form 10-7132 will be furnished in duplicate to the Adjudication Officer of the regional office having jurisdiction over the claims folder.

(1) Whenever VA Form 10-7132 is received in a regional office, both the administrative [activity] and Adjudication Division will give priority handling to this form [ ] since in most cases receipt of this form will require adjustment in the award. In some cases, failure to adjust the award promptly will create an overpayment and, in other cases, failure to act promptly will result in a hardship upon the veteran, such as when a resumption of the full amount of the award may be in order upon release to Non-Bed Care or upon discharge.

(2) Whenever VA Form 10-7132 is received in the Adjudication Division, the claims folder will be carefully analyzed and all necessary actions taken in accordance with the facts found.

(3) [If the veteran is incompetent,] forward a copy of VA Form 10-7132 to the Veterans Services Division having jurisdiction over the guardianship file [par 25.02c NOTE)]; otherwise [retain] the original form [ ] in the claims folder and [destroy] the copy as duplicate material in accordance with Records Control Schedule VB-1, part I, [item 13-052.3]. (Also see pars. 25.08d, 28.10b and 28.14b.)

b. **Specific Use of VA Form 10-7132.** VA Form 10-7132 will be received whenever VA Form 10-7131, part III, item 1 (VA Form 10-7132), or 8 (Asset Information) has been checked by the Adjudication Division and any of the following occurs:

(1) Veteran is discharged from the medical center.

(2) Veteran is placed on Non-Bed-Care status or authorized absence of 30 days or more.

(3) Veteran returns from Non-Bed-Care status or authorized absence of 30 days or more, provided VA Form 10-7132 was previously furnished to the Adjudication Division at the time the veteran departed.

(4) When a veteran with a psychiatric condition is placed on unauthorized absence status:

(a) It will be submitted within 1 workday following the placement of a service-connected veteran on unauthorized absence if (1) the patient has received 21 days' continuous hospitalization, and (2) VA Form 10-7131 has been received with item 3 (21-Day Certificate) checked, and (3) a 21-day certificate has been furnished. Otherwise, VA Form 10-7132 is submitted 30 days after the date the veteran departed on unauthorized absence indicating the veteran has been placed on Non-Bed-Care status or has been [ ] discharged.

(b) If the veteran returns to the medical center or is placed on Non-Bed-Care status from unauthorized absence after a VA Form 10-7132 reporting the unauthorized absence has been submitted.

(5) Whenever asset information is being furnished.

(6) When the veteran has been continuously hospitalized in excess of 21 days for treatment or observation of a service-connected disability. (See par. 25.22b.)

(7) When a veteran is transferred [or discharged] to another VA or non-VA institution as provided in paragraph 25.08. (See also par. 25.24.)

[(8) When a veteran's nursing home care under VA expense is extended.]

25.08 TRANSFERS BETWEEN INSTITUTIONS

a. **Action by Transferring Medical Center**

(1) Whenever a veteran hospitalized or domiciled in a VA institution or in a non-VA institution as a VA beneficiary is transferred [or discharged] from such institution to another VA or non-VA institution as a VA beneficiary, or transferred [or discharged] within or to another institution to receive nursing home care, a VA Form 10-7132 [ ] will be furnished provided VA Form 10-7131, part III, item 1 (VA Form 10-7132), was previously checked.

(2) In permanent transfers, a final hospital summary will also be furnished by the transferring institution if VA Form 10-7131, part III, item 2 (Hospital Summary), had been previously checked.

b. **Action by Receiving Medical Center.** The receiving institution [is] responsible for furnishing all reports and hospital summaries requested on the VA Form 10-7131 previously returned to the transferring institution by the Adjudication Division.

(1) If the veteran fails to report for admission to the receiving institution, the receiving institution will notify the transferring institution of this fact. The transferring institution will then furnish a VA Form 10-7132 to the Adjudication Division showing the disposition of the case.

(2) If a temporary transfer is made permanent, the receiving institution will furnish VA Form 10-7132 as notice of this change.

c. **Nursing Home Cases.** When the veteran is [discharged] to VA [nursing home care] or to a non-VA institution for nursing home care at VA expense, the VA institution [which made the placement] will furnish a VA Form 10-7132 when the veteran is discharged [from nursing home care at VA expense] provided VA Form 10-7131, part III, item 1 (VA Form 10-7132), was previously checked.

(1) In addition to [ ] the name and address of the receiving non-VA nursing home, VA Form 10-7132 will provide the location of the VA clinic assuming responsibility for authorization of the non-VA nursing home care.

(2) A final hospital summary will also be furnished [ ] if VA Form 10-7132, part III, item 2 (Hospital Summary), had been previously checked.

d. **Action by the Adjudication Division Upon Receipt of Notice of Transfer**

(1) **General.** Upon receipt of VA Form 10-7132 notifying of the transfer [or discharge and admission to another institution], the claims folder will be reviewed to determine if the previous VA Form 10-7131 requested all necessary reports and summaries. (See par. 25.06.)

(a) [If] no additional reports or summaries are needed, [file] the original of VA Form 10-7132 and [refer] the copy to the Veterans Services Division, if in order; otherwise, the copy may be destroyed as duplicate material in accordance with Records Control Schedule VB-1, part I, [item 13-052.3].

(b) If additional reports not originally requested on VA Form 10-7131 [ ] are required, a VA Form 10-7131 will be initiated by the Adjudication Division with the proper items in the part III checked. [Send] the original of the form to the receiving VA institution or to the authorizing VA [medical center] or clinic Director if the [admission] was to a non-VA institution at VA expense.

(c) FL 21-121, Request to Non-VA Institution for Hospital Report, will be directed in original and one copy to a non-VA institution in which the veteran is receiving care as a non-VA beneficiary; a copy will be filed in the claims folder (see par. 22.03a (2)). (Also see par. 28.07a(2) re change of name and payee in institutional awards and par. 2.06b re transfer of claims folder.)

(2) **Transfer to Non-VA Nursing Home.** If notification of the veteran's discharge from non-VA nursing home care is required, VA Form 10-7131 with part III, item 1 (VA Form 10-7132), checked, will be directed to the VA clinic responsible for the authorization of the non-VA nursing home care. A summary covering his or her care at the nursing home will be furnished by the authorizing clinic if VA Form 10-7131, part III, item 2 (Hospital Summary), is checked.

25.09 NOTIFICATION TO INSTITUTIONS OF CHANGES IN STATUS

a. **Initial Adjudications or Changes in Status.** [ ] Notification will be sent, by use of VA Form 21-653, Notice of Change in Status of Beneficiary Receiving Hospital or Domiciliary Care, to VA medical centers, if the veteran is institutionalized at VA expense, when:

(1) There is an initial adjudication of pension or compensation.

(2) Any change occurs in service connection or in nonservice-connected status, including an initial grant, adjustment, or termination of entitlement to aid and attendance or housebound rate.

(3) Any change occurs in the status of dependents which affects entitlement.

[(4) There is a change in monetary benefits.]

b. **Content of Form.** The form should contain a concise statement of the status in the veteran's case.

c. **Number of Copies.** [Complete] the form in duplicate unless there is a fiduciary or the veteran is receiving supervised direct pay, in which case [make] an extra copy for the appropriate Veterans Services Division.

d. **Forwarding of Form and Filing of Copy**

(1) When the veteran is hospitalized or domiciled in a VA institution, [send] the original [ ] to the Director of the institution, ATTENTION: [Chief, Medical Administration Service].

(2) When the veteran is hospitalized in a non-VA hospital at VA expense, [send] the original [ ] to the [Chief of Medical Administration Service] of the health care facility which authorized care.

(3) File the copy [ ] in the claims folder.

[e.] **Severance of Service Connection.** When an admission to a VA hospital was for a disability for which service connection has been severed, [promptly inform] the hospital of the severance by VA Form 10-7131, annotated in "Remarks."

SUBCHAPTER II. ADJUSTMENTS UNDER [38 CFR 3.551 AND 3.556]

25.10 GENERAL

a. **Establishing and Maintaining Controls.** In addition to any other action required upon receipt of VA Form 10-7131 or other notice that a veteran in receipt of pension (having no spouse or child), is being furnished hospital treatment, or institutional, domiciliary or nursing home care by the VA, or at VA expense (see par. 25.02a) [~~a pending issue file~~ Return Date under end product 130] will be established for the timely reduction of payments required by [38 CFR 3.551.] (See par. [1.15 re Target controls and par. 25.11 re reductions due to initial admissions.])

(1) Any control for reduction under [38 CFR 3.551] should allow sufficient time to complete amended award action to effectuate the required reduction effective the first day of the third, fourth, or seventh calendar month following hospital admission, as appropriate. (See par. 25.17 if veteran is receiving aid and attendance allowance.)

(2) If before the expiration of the applicable control period, a report is received that the treatment or care has been interrupted by Non-Bed-Care status or authorized absence, appropriate extension of the control date will be made. (See par. 25.13.)

b. **Benefits Not Subject to Reduction Under [38 CFR 3.551.]** The provisions of [38 CFR 3.551] do not require reduction of:

(1) Payments of pension for any period during which a veteran is:

(a) Hospitalized for Hansen's disease,

(b) Maintained in a State soldiers' home,

(c) Furnished hospital, domiciliary or nursing home care in a State home for which the only payment made by the VA is the per diem rate pursuant to 38 U.S.C. 641, or

[(d) Admitted to hospital or nursing home care for rehabilitation after October 16, 1981 (see par. 25.11c).]

(2) Payments of Old Law pension when the veteran establishes the existence of a spouse, child or dependent parent.

(3) Payments of Section 306 or Improved Pension payable under 38 U.S.C. 521(c) when the veteran is married and living with (or reasonably contributing to his or her spouse's support) or has established the existence of a child in his or her custody or outside his or her custody, but to whom he or she is reasonably contributing. (But see par. 25.14a(1)(a) re apportionment to estranged spouse.)

(4) Medal of Honor Special Pension (par. 24.10).

c. **Aid and Attendance Additional Allowance.** See subchapter III, this chapter.

d. **Incompetent Veterans.** The procedures [ ] in this subchapter are for equal application in case of competent and incompetent veterans. However, see chapter 28 for additional actions required in awards to hospitalized incompetent veterans.

e. **Notice to Veteran.** [The veteran will ordinarily be advised by generated letter] in a routine reduction under [38 CFR 3.551] when a veteran has been hospitalized or domiciled at VA expense for the required 2, 3, or 6 months and has no dependents established.

f. **Retired Pay Cases.** When the veteran is entitled to retired pay from a service department and his or her pension award is authorized under special law code 06, see paragraph 29.[29.]

25.11 REDUCTION DUE TO INITIAL ADMISSION

a. **General.** Upon maturity of the control date established under paragraph 25.10a, the claims folder will be received for review and reduction under [38 CFR 3.551,] if otherwise in order, as provided below. When an original or reopened claim for disability benefits is filed after admission for treatment or care, the date controlling computation of the 2-, 3-, or 6-month period will be the date of admission and not the inception date of entitlement to monetary benefits.

b. **Section 306 and Improved Pension Cases.** Under the provisions of [38 CFR 3.501(i) (2) and (3)] and [3.551(c)] (38 U.S.C. 3203(a)), when a veteran having neither a dependent spouse nor child is receiving Section 306 or Improved Pension and 2 full months of treatment or care have elapsed since the month of initial admission to a domiciliary, or 3 full months of treatment or care have elapsed (see par. 25.13) since the month of initial admission to a VA [medical center] or nursing home:

(1) If the veteran is in a VA domiciliary, his/her award will be reduced promptly effective the first day of the third calendar month following the date of admission, to provide for monthly payment not in excess of $60 pursuant to [38 CFR 3.501(i)(2)].

(2) If the veteran is in a VA [medical center] or VA nursing home, his/her award will be reduced promptly effective the first day of the fourth calendar month following the date of admission, to provide for monthly payment not in excess of $60 pursuant to [38 CFR 3.501(i)(2)].

(3) If a hospitalized Spanish-American War veteran has elected Section 306 pension under 38 U.S.C. 511(c)(2) or 512a(3)(b) and is receiving aid and attendance allowance, the award will be amended to restore service pension under 38 U.S.C. 511(a) or 512(a)(1) when the service pension rate exceeds the Section 306 pension rate.

NOTE: An election of Improved Pension is irrevocable and the veteran cannot be awarded service pension as a greater benefit.

Control will then be maintained for adjustment under [38 CFR 3.551(b)], as provided in subparagraph [d] below [(38 CFR 3.551(c)(2))].

c. **[Admissions to Hospital or Nursing Home Care for Rehabilitation on or After October 16, 1981.** Upon receipt of a notice of admission in a pension case subject to 38 CFR 3.551(c) (2) or (3) reduction, in addition to paragraph 25.02 procedures, request certification of participation in a prescribed rehabilitation program. Complete the "Remarks" item of part II of VA Form 10-7131 as follows: "Certify the beginning date of care under chapter 17 rehabilitation program." The DM&S facility will furnish the appropriate certification in part VII, "Remarks," of VA Form 10-7132. The DM&S facility will also furnish notification of discontinuance of participation in such rehabilitation program if it occurs prior to discharge. Consider status under the rehabilitation program as continuing until termination is reported.

(1) The reduction under 38 CFR 3.551(c) (2) or (3) shall not be made for a period of up to 3 additional calendar months after the last day of the third month (following the month of admission) or the last day of the month of readmission if the VA medical center certifies that the veteran is participating in a prescribed rehabilitation program under chapter 17 (38 CFR 3.551(g)).

(2) Thereafter, if it is necessary for the veteran to continue the rehabilitation program, reduction shall not be made for the succeeding number of calendar months determined necessary by the VA medical center to achieve the purpose of the prescribed program.

(3) Upon discharge from a rehabilitation program, a readmission within 6 months for additional rehabilitation will be considered as an extension of the initial period of care. If readmission is not for purposes of further rehabilitation, it will be treated as an initial admission as will a readmission which is initially for rehabilitation purposes.

(4) Controls for reduction will be initially established and adjusted as required if certification of participation in a chapter 17 rehabilitation program is received.

d.] **Old Law and SAW Pension Cases.** Under the provisions of [38 CFR 3.501(i)(1)] and [3.551(b)], when [ ] a veteran in receipt of Old Law pension, or Spanish-American War service pension under 38 U.S.C. 511(a) or 512(a)(1), having neither spouse nor child nor dependent parent, has received 6 full months of treatment or care (see par. 25.13):

(1) [Reduce] the award promptly effective the first day of the seventh calendar month following admission.

(2) [Pay a] maximum monthly amount [of] $30 or 50 percent of the amount payable during the 6-month period, whichever is the greater.

[e.] **Award of Greater Benefits Between Pension and Compensation.** If a veteran in receipt of pension subject to reduction under [38 CFR 3.551] is also entitled to compensation, award whichever is the greater benefit without necessity of a formal election for all periods involved. (See par. 29.04.)

[f.] **Preparation of Awards.** See also paragraph 15.34b (4) and (5).

(1) **Awards Reducing Section 306 and Improved Pension.** [ ] When an award is reduced under [38 CFR 3.551(c).] use reason code 35 for the award line effective as of the date of reduction. The total benefit [amount] will be shown in the ["total" field]. The rate [payable,] not in excess of $60 ($260 in Medal of Honor cases), will be shown in the ["rate" field] and the balance will be shown as a Type 4 withholding in the ["withhold" field of screen 403.]

(2) **Awards Reducing Old Law Pension.** The monthly rate payable as of the effective date of reduction following 6 full months of hospitalization will be not more than one-half the rate otherwise payable but for [38 CFR 3.551(b).] The balance will be shown as a Type 5 withholding. [ ]

(3) **Awards Restoring Full Rate.** See paragraph 25.15.

[g.] **Creation of Overpayment.** In the event that the claims folder is received after maturity of the control date and too late to effect timely reduction, the overpayment cannot be prevented, unless the failure to reduce timely is due *solely* to administrative error (other than processing delays in time required for administrative procedures) and [38 CFR 3.500(b)(2)] may be applied (par. 14.35b).

25.12 ACTION UPON READMISSION

a. **Section 306 and Improved Pension Cases.** When a prior hospitalization was terminated *for any reason*, upon notice of readmission of a veteran receiving pension subject to reduction under [38 CFR 3.551(c)], action will be required as follows:

(1) Upon readmission *within the 6-month period* following termination of a *prior period of treatment or care by the VA of 2 full calendar months in a domiciliary, or 3 full calendar months in a hospital or nursing home* prompt action will be taken to reduce payments under the provisions of [38 CFR 3.551(c)] effective as of the first of the month following the month of readmission.

(2) If *more than 6 months* have elapsed, however, a [ ] control will be established as provided for initial hospitalization to effect reduction as of the first day of the third month following the month of readmission to a VA domiciliary or the first day of the fourth month following readmission to a VA medical center.

(3) Readmission following a period of treatment or care by the VA of *less than* 2 full calendar months duration in a domiciliary, or less than 3 full calendar months in a hospital or nursing home (before reduction action under [38 CFR 3.551(c)] will be considered an initial admission regardless of the reason for termination of the prior hospitalization. A new control for reduction will be required as for any initial admission.

Example of VA Hospitalization Case:

Admission	1-1-[82]			
Discharge	3-15-[82]		No reduction required (less than 3 months)	
First				
Readmission	4-27-[82]	Reduce	8-1-[82]	(3 months after readmission)
Discharge	8-10-[82]	Full Rate	8-10-[82]	
THEN, IF				
Section				
Readmission	12-5-[82]	Reduce	1-1-[83]	(First of month following the month of readmission)
Discharge	1-7-[83]	Full Rate	1-7-[83]	
BUT IF				
Second				
Readmission	2-20-[83]	Reduce	6-1-[83]	(3 months after readmission)

b. **Old Law Pension Cases**

(1) **Regular Discharge or Discharge to Outpatient Care.** When the prior hospitalization was terminated by a [ ] discharge, the procedures provided in paragraph 25.11[d] for initial hospitalizations will be followed for reduction effective the first day of the seventh month following readmission. [38 CFR 3.551(e)(1)])

(2) **Irregular Discharge**

(a) When the prior hospitalization was terminated by an irregular discharge and payments have been restored at the full rate under [38 CFR 3.556(d)] (see par. 25.15b(2)), upon notice of readmission within 6 months, reduction will be effected under the provisions of [38 CFR 3.551(e)(2),] as of the date of readmission.

(b) When readmission following an irregular discharge occurs within 6 months *from the date of initial admission* (before reduction action under [38 CFR 3.551(b),] the period while in an irregular discharge status will be considered as a continuing period of treatment or care, and the award will be reduced as of the first day of the seventh calendar month following the month of the initial admission, exclusive of only authorized absences.

(c) When the readmission occurs 6 months or more *after the irregular discharge*, the procedures for maintenance of control and for reduction provided in paragraphs 25.10a and 25.11[d] for initial hospitalization will be followed.

Examples:

Initial Admission Regular Discharge	1-15-[80] 10-15-[80]	Reduced 8-1-[80], first day of the seventh calendar month following admission.
First Readmission Irregular Discharge	12-15-[80] 3-15-[81]	No reduction necessary (readmission after regular discharge) and less than 6 full months treatment.
Second Readmission Irregular Discharge	5-15-[81] 9-15-[81]	Reduce 7-1-[81], first day of the seventh month following initial readmission (period while irregularly discharged considered a continuing period of care).
Third Readmission Regular Discharge	4-15-[82] 12-15-[82]	Reduce 11-1-[82], first day of the seventh month following readmission. Treated as an initial admission as irregular discharge status exceeded 6 months.

25.13 AUTHORIZED ABSENCES AND NON-BED-CARE STATUS

a. **Computation of Period of Treatment or Care.** For the purpose of computing the 2-, 3-, or 6-month period of treatment or care, short authorized absences of up to 96 hours are considered as constructive treatment or care and [ ] will be counted. (*NOTE: Absences not in excess of 96 hours are not reported to the regional office.*) However, periods of authorized absence and Non-Bed Care *in excess of 96 hours* will *not* be counted for the purpose of reduction under [38 CFR 3.551(b),] nor, after the month of admission, for reduction under [38 CFR 3.551(c).] When the period of full payment of disability is extended in this manner:

(1) [Reduce] Section 306 and Improved Pensions [ ] effective the first day of the month following the date on which 60 aggregate days of treatment or care have elapsed following the month of admission to a domiciliary.

(2) [Reduce] Section 306 and Improved Pensions [ ] on the first day of the month following the date on which 90 aggregate days of treatment or care have elapsed following the month of admission to a VA hospital activity or VA nursing home, or to a non-VA hospital or nursing home at VA expense.

(3) [Reduce] Old Law pension [ ] on the first day of the month following the date on which 180 aggregate days of hospitalization have elapsed following the month of admission.

b. [ ] **Non-Bed-Care Status.** When veterans are placed on Non-Bed-Care status [ ] but are still maintained (i.e., furnished board, lodging, medical care, etc.) by the VA, reduction, if otherwise indicated, is in order under [38 CFR 3.551.] (84 Op. Sol. 201)

c. **Restoration of Full Rate for Absences of 30 Days or More**

(1) Upon receipt of VA Form 10-7132 showing an authorized absence of 30 days or more has been granted a competent veteran, action will be taken promptly, without awaiting expiration of the 30 days, as follows, pursuant to [38 CFR 3.556(a)]:

(a) [Amend] Section 306 and Improved Pension awards [ ] to authorize the full monthly rate (including, if payable, the housebound rate or allowance for aid and attendance) effective the date of departure (unless it is determined that an apportionment for an estranged spouse would be continued).

(b) [Amend] an Old Law pension award [ ] to restore the full rate, *excluding* any allowance for aid and attendance effective the date of *reduction*, releasing the amounts withheld under the regulation and to authorize the full rate, *including* any allowance for aid and attendance effective the date of *departure*. (See also par. 25.20c.)

(2) Upon notice of the veteran's return to the hospital:

(a) In Section 306 and Improved Pension cases, reduction (if still in order) will be made effective the date of return.

(b) In Old Law pensions cases, the award will again be reduced effective the date of return.

(3) For adjustment of awards for incompetent veterans, see paragraph 28.10.

d. **Adjustment for Absences of Less Than 30 Days**

(1) Except as provided in subparagraph e below, [make no] adjustment in the veteran's award, prior to discharge from the hospital, for any absences of less than 30 days, counting the day of departure (38 CFR 3.556(b)).

(2) For adjustment upon discharge, see paragraph 25.15c.

(3) For adjustment in aid and attendance cases, see paragraph 25.20d.

e. **Special Adjustments.** An exception to the foregoing subparagraph d restriction may be taken when the following three conditions are met. Adjustment in the award will be made prior to discharge to authorize the full rate covering the cumulative number of days of absences of less than 30 days, if:

(1) The veteran has been receiving treatment or care for more than 6 months, *and*

(2) The periods of absence for which adjustment is claimed cumulatively exceed a total of 30 days, *and*

(3) A request for such adjustment is received by the Adjudication Division over the signature of the [Chief of Medical Administration Service] stating the inclusive dates of each period of absence and that the adjustment is necessary to meet the financial needs of the veteran. (38 CFR 3.556(c))

25.14 ADJUSTMENT DUE TO EXISTENCE OF DEPENDENTS

a. **Existence of Dependents Alleged**

(1) **Section 306 and Improved Pension Cases.** If VA Form 10-7131 or the record otherwise indicates that the veteran has a dependent which has not been established for VA purposes, [request] evidence of relationship at the time VA Form 10-7131 is completed and returned. If proof of relationship is received, in addition to the action required below, [send] notice of the change in dependency status [ ] to the institution by VA Form 21-653, as provided by paragraph 25.09.

(a) **Evidence Required.** Request for evidence of relationship of a spouse will include a request for evidence of his or her annual income (if such evidence is not of record) or, if estranged, reasonableness of contributions to his or her support necessary to determine entitlement under 38 U.S.C. 521(c) as a veteran with a spouse. In Improved Pension cases, evidence of relationship of a child will include the child's income or, if the child is not in the veteran's custody, evidence of reasonable contributions to the child's support.

(b) **[Evidence Not Received Within Control Period.]** If at the expiration of the control period for reduction under 38 CFR 3.551(c), the requested evidence of the existence of a dependent has not been received, reduction as of the first day of the third or fourth month of treatment or care, as appropriate, is mandatory (par. 25.11b).

[(c) **Evidence Received After Reduction.**] If the evidence establishing a dependent is received within 1 year after the date of request while the veteran continues to be institutionalized, the Type 4 withholding under 38 CFR 3.551(c) will be terminated as of the date of reduction; otherwise, from date of receipt of such evidence (38 CFR 3.551(f)). Additional amounts payable only under Improved Pension for the dependent(s) will be awarded as appropriate (38 CFR 3.401(b)). (See par. 24.06.)

NOTE: Although an additional amount may not be paid under Section 306 pension for a dependent who cannot be established on or before December 31, 1978, the existence of such dependent is controlling for purposes of reduction under 38 CFR 3.551(c).

(2) **Apportionment to Estranged Spouse.** When a veteran receiving pension under 38 U.S.C. 521(b) as a single person is reduced to $60 monthly because of hospitalization and a claim for apportionment is received on behalf of an estranged spouse, upon an affirmative showing of hardship, all moneys in Type 4 withholding may be apportioned to the estranged spouse. (See 38 CFR 3.454(b).)

(a) The effective date of the apportionment will not be prior to the date of claim. If less than all of the monies in Type 4 withholding are apportioned, the award document will be annotated to show the amount of withholding attributable to Type 1 and Type 4. A Type 1 withholding for the entire amount will be substituted for the Type 4 withholding code.

(b) When the veteran is discharged, the apportionment must be reviewed based on all the facts and equities to determine whether it should be continued, modified, or terminated. (See also 38 CFR 3.451.) If continued or modified, a readmission will not necessitate a reduction under 38 CFR 3.551(c).

(3) **Old Law Pension Cases.** Evidence of relationship need not be requested until expiration of the 6-month control for reduction under 38 CFR 3.551(b). Payments may be continued and proof of relationship requested.

(a) A [ ] control will be established so that if the evidence is not received within 60 days of this request, the award will be reduced accordingly on the basis of no dependents as of the first of the month in which the amended award is approved.

(b) If satisfactory proof is received within 1 year from the date of request, while the veteran continues to be institutionalized, the full rate may be restored from date of reduction; otherwise from date of receipt of such evidence (38 CFR 3.551(f)).

b. **Loss of Dependent–When Only Dependent Is a Child**

(1) When the veteran has only a child (or children under age 18) or if over 18, attending an approved course of instruction, including a child receiving DEA benefits for whom additional compensation is not payable, the award will not be subject to reduction under 38 CFR 3.551 until expiration of the required period as follows:

(a) **Section 306 and Improved Pension Cases.** The veteran's pension will be subject to reduction to $60 the first day of the third or fourth month, as appropriate under paragraph 25.11b, following the month in which the veteran is without a dependent.

(b) **Old Law Pension Cases.** The veteran's pension will be subject to reduction by one-half the first day of the seventh month following the month in which the veteran is without a dependent.

(2) At the time notice of hospitalization is received, [establish] the control for timely reduction as required by subparagraph (1) (a) and (b) above. If the child enters or continues in school beyond age 18, including a child in receipt of DEA benefits, the control will be appropriately extended.

c. **Unscheduled Loss of Dependent–Section 306 and Old Law Only.** [If] a veteran ceases to have a dependent, the provisions of 38 CFR 3.551 (b) and (c) will be applied on the basis of the veteran's *factual* status as "without a dependent" at time of admission or later date of loss while hospitalized. [If a Section 306 or Old Law pension recipient entitled to end-of-year protection for loss of a dependent is discharged prior to the end of the calendar year, the veteran will again be considered as "with a dependent" and if in order, entitled to the "end-of-year" protection as to the rate payable prior to hospitalization. If the loss of dependent occurs while the veteran is hospitalized, send notice of the dependency status change to the affected institution by VA Form 21-653 in accordance with paragraph 25.09 and take the following actions. (See also par. 28.16d re incompetent veterans.)]

(1) **Control of Reduction.** [Establish a] control to effect timely reduction at the expiration of the 2-, 3-, or 6-month period following the month in which factual change in dependency occurred (par. 25.10a).

(2) **Award Adjustment.** At the expiration of the control:

(a) The award reducing payment (using withholding Type 4 or 5, as appropriate) will reflect the reduced rate and (factual) dependency code "00" for a veteran without a dependent under the standard procedures.

NOTE: If income is now excessive, as a veteran without a dependent, the award must provide for termination at the end of the year, using special law code 18 (par. [9.10b(1).]

(b) If this last dependent was a child, simultaneous adjustment of the birth data [on screen 304] also will be required, using action code 5 (End-of-Year Purge). (See par. 24.16.)

(3) **Discharge Before End of Calendar Year.** [If released] from hospitalization prior to the end of the calendar year of loss (or earlier previously scheduled reduction for an only dependent child reaching age 18 or terminating school), the veteran will again be considered as having this dependent until the end of that year (or earlier scheduled date).

(a) In addition to zeroing out the Type 4 or 5 withholding and restoring the full rate from date of reduction in protected pension cases, the dependency code entry must reflect the existence of a dependent subject to the end-of-year rule.

(b) A reason code 56 (or 24, 25, etc., as appropriate) end of the year (or earlier scheduled date) future award line must also be used as required by paragraph 24.16b(4)(a).

(c) In the case of a child dependent, this adjustment may also require an action code 5 reestablishment of the child birth data [ ], with the applicable status code 6, 7 or 8.

d. **Acquisition of Dependents During Hospitalization.** When a veteran without dependents is hospitalized and, following admission to the institution, becomes a veteran with dependents, authorization of pension payable under 38 U.S.C. 521(c) or restoration of withheld payments of Old Law pension, as appropriate, will be made effective as provided in the foregoing subparagraph a, but not prior to the date of acquisition of such dependent; e.g., date of marriage. (Also see par. 25.09 re VA Form 21-653.)

e. **Incompetent Veterans.** See paragraphs 28.08, 28.16, and 28.17.

25.15 RESTORATION UPON DISCHARGE ([38 CFR 3.556])

a. **Section 306 and Improved Pension Cases.** Upon receipt of VA Form 10-7132 showing termination of hospitalization for any reason, the veteran will be awarded the full rate of pension to which then entitled (including, if involved, restoration of allowance for A/A), effective the date of release, using reason code 36 and zeroing-out the Type 4 withholding.

[ ]

b. **Old Law Pension Cases**

(1) **[Regular] Discharge or Discharge to Outpatient Care.** Upon receipt of VA Form 10-7132 showing [a] discharge, the award will be adjusted to authorize release of all amounts withheld under [38 CFR 3.551(b)] excluding additional allowance for aid and attendance withheld under [38 CFR 3.552] and restoration of full rate pursuant to [38 CFR 3.556.] The amended award, using reason code 36, will show the full rate (with Type 0 withholding) from the effective date of reduction. When necessary, "Prior Net Award Data" will be completed [on screen 404] to show all prior payments (par. 15.28).

(2) **Irregular Discharge**

(a) [Amend] the award [to pay] the full monthly rate effective only from the date of release.

(b) [Do not] restore amounts withheld, however, [ ] prior to the expiration of 6 months following [an] irregular discharge, unless the veteran's hospitalization is resumed and terminated by a regular discharge prior to the expiration of such period [(38 CFR 3.556(d).] A local or computer control, as appropriate, will be established for this purpose.

(3) **Incompetent Veteran.** [Do not] restore amounts withheld prior to the expiration of 6 months following a rating of competency ([38 CFR 3.556(c)].) (See par. 28.12c.)

c. **Adjustment Due To Authorized Absence or Non-Bed-Care Status**

(1) **Absence of 30 Days or More.** Adjustment will be made [ ] for approved discharges.

[ ]

(2) **Absences of Less Than 30 Days**

(a) Except as provided for special need adjustments (par. 25.13e), [make] no adjustment [ ] for absences of less than 30 days prior to discharge, at which time action will be taken as provided in subparagraph (1) above.

(b) Since notices of absences of less than 30 days will not be furnished as they occur (par. 25.04a), in addition to restoring the full rate for the total of such periods of absences, it may be necessary to restore the full rate in a case prematurely reduced under [38 CFR 3.551] because of absences affecting the computation of the 2-, 3-, or 6-month period (par. 25.13a).

25.16 (Deleted.)

SUBCHAPTER III. ADJUSTMENT OF AWARDS INVOLVING AID AND ATTENDANCE ALLOWANCE

25.17 REDUCTION OF AID AND ATTENDANCE DURING HOSPITALIZATION

a. **Initial Control.** Following the receipt of VA Form 10-7131 [or VA Form 10-7132] showing the veteran's admission [or transfer] to hospital, nursing home or domiciliary care at VA expense (or at U.S. Government expense, if entitled under 38 U.S.C. 314(r)), [establish a ~~pending issue control~~ future dor under end product 130] to discontinue additional compensation or increased pension for aid and attendance as of the first day of the second calendar month following the month of admission [(38 CFR 3.552(b)(1))] ; this is, *unless* the disability is:

(1) Paraplegia involving paralysis of both lower extremities together with loss of anal and bladder sphincter control, or Hansen's disease; *except* that when the veteran is entitled under 38 U.S.C. 314(r), hospitalized *at U.S. Government expense*, discontinuance of A/A is required under [38 CFR 3.552(b)(2).]

(2) Additionally, in pension cases only, blindness (visual acuity 5/200 or less) or concentric contraction of visual field to 5 degrees or less.

b. **Award Action.** At the expiration of the control period, [take] award action [ ] to discontinue payment of the allowance of aid and attendance effective the first day of the second calendar month following the month of admission, using reason code 35.

(1) The rate payable will be determined as follows:

(a) In pension cases, the housebound rate will be awarded effective that date [(38 CFR 3.552(e))] subject to further reduction under [38 CFR 3.551 (b) or (c),] as appropriate. When, in Improved Pension cases, the IVAP (income for VA purposes) exceeds the housebound rate, amended award action will be taken to provide for a Type 4 withholding of the rate payable based upon the aid and attendance entitlement. [ ]

Example: Veteran under Improved Pension without dependents has an income of [$7,623] for VA purposes. Veteran receiving an A/A benefit rate of $100 monthly was hospitalized on [June] 15, 1984, requiring adjustment under [38 CFR 3.552] as of [August] 1, 1984. As the IVAP exceeds the housebound rate, no benefits are payable while the veteran remains hospitalized. [ ]

(b) In compensation cases, entitlement to the housebound or other appropriate hospitalized rate will be determined in accordance with [38 CFR 3.552(d), (f), (g), (h), or (i)] , as shown in the SMC rate table in appendix B.

(c) When notice of hospitalization is received too late to avoid an overpayment, the retroactive adjustment will be made creating an overpayment unless the failure to reduce timely is due solely to administrative error and [38 CFR 3.500(b)(2)] may be applied.

(2) [The appropriate status of the case will be indicated by entry of PT-A/H in the "DISAB" field on screen 403 (par. 15.31)].

(a) No "Withholding" need be shown because of *this* adjustment.

(b) Rating input will not be required *solely* for this action except as provided in subparagraph (4) below (par. 23.03c).

(3) In pension cases, also subject to reduction under [38 CFR 3.551], the appropriate control will be established as provided in paragraph 25.10. At the expiration of this control, action will be taken as provided in paragraph 25.11, subject to the following:

(a) The "Total" [ ] entry will show the housebound rate, payable in aid and attendance cases during hospitalization (par. 23.03b(1)), which will be used in determining the balance for entry as the Type 4 or 5 withholding when effecting the subsequent reduction under [38 CFR 3.551].

(b) In Section 306 and Improved Pension cases also subject to reduction under [38 CFR 3.551(c)(1),] when [ ] action is being taken near or after the end of the second calendar month, one amended award will be used to reduce to the housebound rate effective the first day of the second month following admission, with the further reduction to a rate not in excess of $60 the first day of the third month following admission to a VA domiciliary. For control of cases subject to reduction as of the first day of the fourth month [(38 CFR 3.551(c)(2))], see paragraph 25.10.

[ ]

(4) In compensation cases, the award code entry will suffice without need for accompanying rating data, except when SMC code 51, 52, 53, or 54 is employed. In such cases, the claims folder will be referred to the rating board for determination whether the veteran is entitled, in addition to the basic hospital rate, to additional compensation under 38 U.S.C. 314(k), unless the latest rating indicates appropriate SMC coding when the veteran is hospitalized.

(a) The rating board will either furnish Authorization the necessary SMC codes to justify the hospitalized rate or inform them that no additional SMC coding is required.

(b) If new rating data are essential, it will be entered directly on the rating screens. (See par. 1.20b(4).) (Also see par. 25.20b re coding change following hospital discharge.)

[ ]

c. **Notification to Institution.** Notification of the award action will be sent to the institution or the Chief, Medical Administration Service, by furnishing [ ] VA Form 21-653. (See par. 25.09.)

25.18 DETERMINATION OF NEED FOR HOSPITAL SUMMARY

a. **General.** In every case, when a beneficiary who is receiving increased compensation or pension for regular aid and attendance is admitted to a hospital for treatment as a VA beneficiary, it will be the responsibility of the Adjudication Division to determine whether a hospital summary will be required.

b. **Hospital Summary Not Required.** When the additional benefit of regular aid and attendance has been properly authorized by rating decision to a veteran whose basic condition requiring aid and attendance is not subject to improvement [(no future examination)], or in terminal cases, a hospital summary will not be required and the benefit will be reinstated following release from VA care. Only item 1 (VA Form 10-7132), part III, VA Form 10-7131, will be checked.

c. **Hospital Summary Required.** In other cases involving conditions subject to improvement, allowance for aid and attendance will be restored following release from hospital care, but a hospital report will be obtained for referral to the rating board for consideration of continued entitlement. In such cases, items 1 (VA Form 10-7132) and 2 (Hospital Summary), part III, VA Form 10-7131, will be checked.

(1) These items, 1 and 2, will also be checked when allowance for aid and attendance has been granted in a disability pension case on the basis for nursing home patient status. Upon receipt of VA Form 10-7132 showing VA care terminated, immediate reinstatement of the aid and attendance allowance will be effected if the award has been reduced under [38 CFR 3.552.] However, the case will be controlled for receipt of the final summary.

(2) If the final summary shows return to a nursing home, it will be filed by Authorization. If the veteran did not return to a nursing home, the criteria in paragraph 24.15d will be applied to determine continued entitlement to aid and attendance allowance.

25.19 GRANT OR TERMINATION OF ENTITLEMENT TO AID AND ATTENDANCE DURING HOSPITALIZATION

a. **Grant.** When aid and attendance benefits are granted to a hospitalized veteran, action will be taken as follows:

(1) When the grant is from an effective date prior to the first day of hospitalization, [award] the full benefit from [the first day of the month following the] date of entitlement. Effective the first day of the second calendar month following admission, the award will be reduced to the housebound rate in pension cases and the applicable hospitalized rate in compensation cases [(38 CFR 3.552(a)(1)).]

(2) If the effective date of initial entitlement to the aid and attendance allowance is on or after the date of institutionalization at VA expense, the aid and attendance allowance shall not be paid until the date of discharge or release from the institution. The veteran will be awarded the housebound or hospitalized rate from the [first day of the month following the] date of the grant until the date of discharge [(38 CFR 3.552(k))], subject to the [38 CFR 3.551] reduction requirement in pension cases.

(3) Notice of the award or change of status will be furnished to the veteran or fiduciary and VA Form 21-653 will be sent as notice to the institution in accordance with paragraph 25.09, in both compensation and pension cases.

(4) An extra copy of VA Form 21-653 will be prepared and filed on the award section of the claims folder as a *temporary flash* so that further award action may be taken, upon receipt of VA Form 10-7132 furnishing notice of the veteran's discharge or departure, to authorize the increased A/A benefit effective the date of discharge.

b. **Terminations.** When entitlement to aid and attendance (or the housebound/hospitalized rate) is terminated by rating while the veteran is hospitalized, [do not reinstate] the additional compensation or increased pension for regular aid and attendance following hospitalization solely for the purpose of applying the provisions of [38 CFR 3.105 (e) or (f)].

(1) [Send] VA Form 21-653 [ ] to the institution as provided in subparagraph a(3) above, and [send] prompt notice of the termination of this entitlement [ ] to the veteran or the veteran's fiduciary.

(2) The flash copy of VA Form 21-653 will insure that proper action will be taken at termination of hospitalization.

25.20 ADJUSTMENT OF AID AND ATTENDANCE BENEFITS UPON DEPARTURE OR DISCHARGE FROM, OR RETURN TO, INSTITUTION

a. **Resumption Without Rating Board Action.** Upon receipt of official notice of discharge from the institution, [take] award action [ ] at once to resume payment of aid and attendance benefits (entering [PT-A/A in the "DISAB" field on screen 403]. It will not be necessary to await receipt of the hospital report before taking such award action. (Also see par. 23.03.)

b. **Review of Rating Data.** In compensation cases, [review] the claims folder [ ] to determine whether the SMC coding was changed to support the award during hospitalization. If the coding was changed, [refer] the claims folder [ ] to the rating board for determination whether new rating data [are] necessary to support the award following discharge. (See par. 25.17b(4).)

c. **Absences of 30 Days or More**

(1) Upon receipt of VA Form 10-7132 showing an authorized absence of 30 days or more, [amend] the award [ ] promptly, without awaiting expiration of 30 days, to restore the full aid and attendance rate effective the date of departure. Upon return, [discontinue] the additional allowance for aid and attendance [ ] (reduced to housebound rate) effective the date of readmission.

[ ]

(2) When VA Form 10-7132 showing an authorized absence of 30 days or more is received during the initial period of hospitalization before award action reducing aid and attendance allowance, adjustment of the award is unnecessary. Under [38 CFR 3.556(a),] no reduction of the award is in order when the veteran is placed on Non-Bed Care status or authorized absence of 30 days or more. However, reduction will be made effective the date of readmission as an authorized absence does not interrupt the running of the period of hospitalization requiring the reduction under [38 CFR 3.552(b).] For example, a veteran receiving aid and attendance allowance is admitted on October 10, and is granted a 30-day authorized absence on November 15. He or she returns December 1st. The increased compensation or pension payable on account of need of aid and attendance for other than a condition excepted by [38 CFR 3.552(b)] would be reduced effective December 1st, the date of return.

d. **Retroactive Adjustments.** [Make no] adjustment for additional pension or increased compensation for regular aid and attendance for periods of authorized absence of less than 30 days [ ] until after discharge from hospitalization. When a retroactive amended award is prepared to resume the full aid and attendance rate from a date earlier than the date of discharge in order to cover several short periods of authorized absence from hospitalization, [do not] list the specific days of absence, only the total number, in Remarks.

e. **Effective Dates.** When award adjustments are made by reason of hospitalization, the additional benefit for aid and attendance is included on and from the date of discharge except, of course, when included as of an earlier date to cover absences for which award adjustment was not made.

f. **Readmission Following Irregular Discharge.** When notice is received of readmission within 6 months after the date of an irregular discharge, [discontinue] the allowance for aid and attendance as of the date of readmission ([38 CFR 3.552(b)(3)]). If, however, the veteran is readmitted 6 months or more after the irregular discharge, [discontinue] the allowance for aid and attendance [ ] as of the first day of the second calendar month following the month of readmission (par. 25.17b).

25.21 EXPEDITED AID AND ATTENDANCE OR HOUSEBOUND DETERMINATIONS FOR NONSERVICE-CONNECTED CHRONIC INVALIDS HOSPITALIZED AT VA EXPENSE

a. **Applicable Cases.** There are veterans [ ] who are patients in VA medical centers or maintained by the VA in other hospitals, who are permanently and totally disabled and who may be entitled to allowance for regular aid and attendance or housebound benefits due to chronic invalidism. These individuals do not require hospital treatment and would leave and return to their homes or enter private nursing homes if they were assured prior to leaving that they would receive the increased pension because of their need of regular aid and attendance or housebound benefits. In addition, if rated as being in need of regular aid and attendance, such individuals may also be entitled to the housebound rate while still hospitalized. (See par. 25.04.)

b. **Action by Medical Authorities.** When such cases are identified, action will be initiated by the VA medical center (or by the [Chief, Medical Administration Service] of the health care facility having jurisdiction when the veteran is hospitalized at VA expense in a non-VA hospital) to ascertain:

(1) Medical feasibility of authorizing the veteran's discharge from the hospital; and

(2) The veteran's willingness to accept discharge; and

(3) Whether arrangements will be made which will assure adequate care of the veteran at his or her home or at some other suitable place.

c. **Referral to Adjudication.** [ ] The medical center or [Chief, Medical Administration Service] of the health care facility will furnish a completed VA Form 21-2680, and inform the Adjudication Officer [ ] by letter or memorandum that it is proposed to discharge the veteran upon notice that he/she will be entitled to additional allowance for aid and attendance or housebound benefits upon discharge.

d. **Rating Board Action.** The memorandum or letter and enclosures will be attached to the claims folder and promptly routed to the rating board to determine whether the veteran is [ ] in need of regular aid and attendance [or, if not, housebound benefits.]

(1) If so, the rating will also indicate whether the veteran is entitled to A/A while hospitalized.

(2) The case will then be routed to the Authorization activity.

e. **Authorization Action.** Prompt action will be taken to award the housebound or A/A rate, if payable (see par. 25.19).

(1) The VA medical center (or, when applicable, the clinic Medical Administration Service of the field office concerned) will be informed of the decision of the rating board and any award action by use of VA Form 21-653. (See par. 25.09 b, c, and d.)

(2) Upon receipt of VA Form 21-653 showing entitlement to aid and attendance when not hospitalized, appropriate action will be taken to discharge the veteran and immediately submit VA Form 10-7132 to the Adjudication Officer.

(3) Upon receipt of VA Form 10-7132 notifying of veteran's discharge, the award will be further adjusted as required, effective the date of discharge, on an expedited basis.

SUBCHAPTER IV. AWARD ADJUSTMENTS BASED ON HOSPITALIZATION IN EXCESS OF 21 DAYS AND ON TEMPORARY SURGICAL RATINGS

25.22 OBTAINING 21-DAY CERTIFICATION WHEN VETERAN IS HOSPITALIZED IN EXCESS OF 21 DAYS

a. **Initial Action.** Upon receipt of VA Form 10-7131 showing admission to a VA medical center or non-VA hospital as a VA patient for treatment of a service-connected disability evaluated at less than 100 percent, check part III, items 1 (VA Form 10-7132), 2 (Hospital Summary), and 3 (21-Day Certificate), of the form and return the original of the form to the originator. Establish a pending issue file under end product 320 for return of the 21-day certification or hospital summary (see par. 1.15 re controls).

b. **Action by the Medical Center.** When VA Form 10-7131 is received by the Medical Administration Service, necessary controls will be established to insure the forwarding of a certification following 21 days' continuous hospitalization for treatment or observation of a service-connected disability(ies). This certification will be submitted on VA Form 10-7132. The certification will state:

> Current [medical] records show the veteran was hospitalized for 21 consecutive days, from *[date of admission]* to *[22d day]*, for treatment or observation on account of *[State] diagnosis(es)* and his (her) presence is still required in the hospital for this (these) condition(s).

(1) Only service-connected conditions requiring hospitalization for treatment or observation will be listed in the certification.

(2) The certification on VA Form 10-7132 will be signed by the Chief, Medical Administration Service, or assistant.

c. **Admission for Nonservice-Connected Condition Followed by Treatment for Service-Connected Condition.** When the veteran is initially hospitalized for a nonservice-connected disability but treatment is instituted for a service-connected disability, the institution will submit a supplemental VA Form 10-7131 showing a change in diagnosis (see par. 25.05). Upon receipt of such supplemental form, take the action indicated in subparagaph a above.

d. **Initial Grant of Service Connection for Condition Under Treatment During Hospitalization.** If, while the veteran is hospitalized, service connection is granted with a schedular evaluation of less than 100 percent for the condition for which the veteran is hospitalized the action indicated in subparagraph a above will be taken.

(1) If the original VA Form 10-7131 has already been returned, a supplemental form will be initiated by the Adjudication Division.

best copy available

(2) In addition, a notice of change in status, VA Form 21-653, will be sent with VA Form 10-7131. (For use of VA Form 21-653, see par. 25.09.)

25.23 INITIAL AWARD ADJUSTMENT

[a. **General.** If a VA Form 10-7132 with the 21-day certification for a service-connected disability other than a neuropsychiatric condition is received, Authorization may prepare an amended award granting paragraph 29 benefits without referring the case to the rating board. Review the latest rating of record to ensure the 21-day certificate is in order. If there is some doubt as to the validity of the 21-day certificate or the 21-day certificate is for a neuropsychiatric condition, Authorization will refer the VA Form 10-7132 with the claims folder to the rating board for rating action under paragraph 53.02.

b. **Award Action.** Before an open-ended paragraph 29 award is prepared, Authorization shall contact (by telephone or electronically) the VA medical center to verify the veteran's status. After verification, prepare an amended award granting paragraph 29 benefits. Using rating data from the latest rating, complete the 301 screen with 100 in the "%" and 29 in the "PAR" fields for the disability for which paragraph 29 benefits are being awarded. If there are two or more service-connected disabilities for which paragraph 29 may be applicable (e.g., veteran is treated simultaneously for two or more service-connected disabilities), increase only one of the conditions on the 301 screen. Prominently annotate the award "OPEN-END PAR. 29 AWARD — VA Form 10-7132 dated _____." Take the end product credit when the paragraph 29 award is authorized. (See par. 29.27d re awards involving retired pay waivers.) If the award involves children, paragraph 15.24d governs the number of future rate changes shown on the award. Use code "D" for any additional future rate change that is omitted.

c. **Control.** Closely control open-ended paragraph 29 awards. Establish a new 30-day pending issue file under end product 320 to confirm continued treatment as provided in paragraph 53.02g. At least monthly, Authorization shall verify (by telephone or electronically) the veteran's status with the VA medical center.]

[d.] **Commencement Dates.** When award adjustments are made by reason of hospitalization for a service-connected condition in excess of 21 days, the total rate shall be paid from the first day of the month following the date of admission if the period of hospitalization falls within more than 1 calendar month (38 CFR 3.31). When the hospitalization is within 1 calendar month and a convalescent period is not required, the commencement date shall be the first day of the month of admission and the reduction to the prehospital rate shall be the first day of the following month.

25.24 ACTION OF RECEIPT OF NOTIFICATION OF DISCHARGE, TERMINATION OF TREATMENT, OR AUTHORIZED ABSENCE

a. **Convalescent Period Not Required.** When VA Form 10-7132 shows veteran's discharge from hospitalization, with part III completed indicating that a period of convalescence is not required, take amended award action without prior referral to the rating board to reduce the award to the prehospital rate effective the 1st day of the month following the month of discharge.

(1) The amended award will reinstate the prehospital evaluations by entry on the 301 screen. [ ]

(2) The pending issue file under end product 320 will be continued to insure receipt of the hospital summary and rating action based thereon within 30 days following date of discharge, in accordance with paragraph 25.25.

b. **Convalescent Period Required.** When VA Form 10-7132 shows veteran's discharge from hospitalization with part III completed indicating that a period of convalescence is required, the 100 percent award will not be disturbed pending receipt of the hospital summary.

(1) The pending issue file under end product 320 will be continued to insure receipt of the hospital summary and rating action based thereon within 30 days following date of hospital discharge, in accordance with paragraph 25.25.

(2) The 100 percent, paragraph 29 award will not be reduced to the prehospital level because of nontimely receipt of a hospital summary. In such case, Authorization will allow the award to continue subject to reduction as of the 1st of the month following the month in which the period of convalescence ends.

(3) Followups for a hospital report will be closely controlled until it is received.

c. **Termination of Treatment for Service-Connected Disability.** If treatment or observation for a service-connected disability is terminated and the veteran remains hospitalized for treatment of a nonservice-connected disability, the medical center will submit

52.02) will be entered and payments reduced to the prehospital rate as set forth in paragraph 25.24a, followed by the reduced entitlement as of the further effective date under [38 CFR 3.105(e)].

d. **Convalescent Rating Assigned**

(1) **Prehospital Evaluation Restored**

(a) If a convalescent rating is assigned following reduction under paragraph 25.24a, [take] award action [promptly] to restore the 100 percent evaluation [ ] in order to avoid interruption in payments at the increased amount. The award will also provide for adjustment to the continuing prehospital evaluation assigned in the rating effective the day following the future date of termination of the convalescent rating.

(b) When the 100 percent hospital rate has been continued under paragraph 25.24b, [take] award action [ ] to effect the future change to the prehospital evaluations assigned.

(c) In either situation, the award will be processed with the convalescent rating.

(2) **Prehospital Evaluation Reduced**. If the prehospital rate is to be reduced following a convalescent rating, the provisions of [38 CFR 3.105(e) apply] (see par. 52.02). The award, processed with the rating data, will provide for payment at the 100 percent rate for the period of convalescence, reinstating the prehospital rate at the expiration thereof for the period prescribed by [38 CFR 3.105(e)], followed by the reduced rate or termination, as appropriate.

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CHAPTER 26. APPORTIONMENT OF DISABILITY AWARDS

26.01 AUTHORITY

Apportionment of disability benefits payable to veterans is governed by VAR's 1450 through 1458. The criteria provided in VAR 1451 as to the factors to be considered require an optimum exercise of discretion in determining whether, on the basis of the facts found in the individual case, an apportionment should be made and, if so, the amount thereof. Subject to the restrictions imposed by VAR 1458, all or part of a veteran's disability benefits may be apportioned under the following general conditions.

a. **Competent Veteran.** Apportionment of a competent veteran's benefits may be made only *upon receipt of a claim* therefor and evidence meeting the requirements of VAR 1451:

(1) To an estranged spouse and child or children in the spouse's custody.

(2) To a child or children [not living with] the veteran [and to whom the veteran is not reasonably contributing]; except that a claim for apportionment on their behalf should be invited when consistent with the equities. (See par. 26.09.)

(3) To a dependent parent and, if additional *compensation* is payable on behalf of such parent, [(also see par. 28.08b(4)(a))] in an amount not less than the amount of such additional compensation. (VAR 1452(D))

b. **Incompetent Veteran.** (See pars. 28.08 and 28.17.)

c. **Veteran Disappeared.** (See par. 24.09.)

d. **Veteran Incarcerated.** (See par. 24.07.)

e. **Forfeiture Cases.** (See par. 20.09.)

f. **Veterans Benefits Not Apportionable.** Veterans benefits will not be apportioned (VAR 1458):

(1) When the total benefit payable is so small it does not permit payment of a reasonable amount to any apportionee.

(2) When the spouse of a disabled person has been found guilty of conjugal infidelity by a court having proper jurisdiction.

(3) For the spouse of the veteran if it has been determined that he or she has lived with another person and held herself/himself out openly to the public to be the spouse of that other person, except when such relationship was entered into in good faith with a reasonable basis for the spouse believing that the marriage to the veteran was legally terminated. No apportionment to the spouse will thereafter be made unless there has been a reconciliation and later estrangement. However, the veteran is still entitled as a married veteran as long as he/she knows the whereabouts of the estranged spouse [and is contributing to his/her support.]

(4) When the child of the disabled person has been legally adopted by another person (see par. 26.10).

(5) To a child under the age 18 years who enters the active military service. However, any additional amount will be paid to the veteran until the child's 18th birthday unless the child is included in an existing apportionment to an estranged spouse. No adjustment in the apportioned award to the estranged spouse will be made based on the child's entry into service.

26.02 AWARD ACTIONS—GENERAL

When an apportionment is made, the awards to the veteran and apportionees will be prepared and processed in accordance with the instructions in paragraph 15.08a(3), as supplemented in this chapter.

a. **Veteran Award Is a Prerequisite.** There must be a type A (veteran) master record established by the processing of a veteran award (regular or record purpose award) simultaneously with *or prior* to the introduction of an award to or for an apportionee. In the absence of the veteran master record necessary to support the apportionee award, a computer audit of the apportionee award would be impossible, resulting in the rejection of the transaction. (See par. 15.01b(3).)

(1) **Apportionee Award Pending.** When the apportioned shares for two or more apportionees have been determined but the preparation and/or processing of one or more apportionee awards will be delayed (e.g., pending appointment of a fiduciary for a minor or incompetent dependent), the veteran award providing for the required withheld amounts may be introduced alone or with the award(s) to any other apportionee(s). The deferred apportionee award(s) may then be processed on subsequent and different transmittal(s) without need for an accompanying veteran award, unless it has become necessary to increase the amount withheld or to extend the period for withholding.

(2) **Veteran Award Pending.** When in a converse situation, an incompetent veteran's award is deferred pending appointment of a fiduciary and the circumstances warrant, an award to an apportionee may be authorized and processed immediately if accompanied by a record purpose veteran award, as provided by paragraphs 23.09 and 15.30.

b. **Balancing of Awards.** The veteran award must provide sufficient amounts under type 1, Withholding, to equal *or exceed* the total of the monthly rates authorized for all periods involved in all the apportionee awards introduced.

(1) **As to Amounts.** When an institutionalized veteran, by reason of the application of VAR 1551 or 1557(D), is to be paid only a portion of the total award, and less than the full balance is apportioned to a dependent, the difference between the "Total Award" and the "Monthly Rate" payable on behalf of the veteran will be entered as a type 1, Withholding. If payments for the veteran are terminated under VAR 1557 and a care and mmaintenance award is not in order, the record purpose veteran award required to support an apportionee award will show the amount of the "Total Award" as the amount withheld (par. 15.30b). Also see paragraph 28.07e re preparation of awards involving a withholding for PFOP.

(2) **As to Effective Dates.** A veteran award may provide for future rate changes not reflected in the apportionee award(s) (e.g., when the amount of the "Total Award" is reduced but the amount withheld is unchanged or is not reduced to less than the amount authorized for all apportionees). However, an apportionee award must not provide for any future rate change as of any effective date beyond the last future provided for by the veteran award. (Also see par. 15.14b(4).)

c. **Subsequent Adjustment.** When there is an existing type A (veteran) master record, any original, reopened, or amended award to an apportionee which currently or prospectively authorized benefits for any additional period and/or an amount in excess of the amount provided for under a type 1, Withholding, in the veteran award, will require an accompanying (or prior) amended veteran award to authorize the additional amount and/or period of withholding.

(1) For example, an amended apportionee award extending benefits for a child on account of school attendance must be accompanied by an amended veteran award similarly extending the withholding for the additional period.

(2) Conversely, an amended veteran award changing future effective dates reflected in the apportionee award(s) and/or reducing the amount withheld to an insufficient amount will require a simultaneous adjustment in the apportionee award(s).

d. **Terminations and Suspensions.** A stop- or suspend-paymnt transaction against only an apportionee record will have no effect on the other records in the case. However, as stated in paragraph 17.02e(2), termination of the veteran award, NOD or updating action on a scheduled future termination will effect a

simultaneous termination of all apportionee records in the case. Similarly, dependent upon the suspense reason, suspension of the veteran record may also effect simultaneous suspension of the apportionee record(s). (See par. 17.03d(3).)

26.03 APPROVAL OF APPORTIONMENTS

A formal memorandum for file will be required for both favorable and unfavorable decisions on claims for apportionment.

a. VA Form 21-441, Special Apportionment Decision, or other memorandum will be prepared by an adjudicator for the approval of an authorizer in accordance with paragraph 14.34.

b. When a fiduciary has been appointed or designated by the Veterans Services Officer for the veteran, the VSO's recommendation will be sufficient authority for an apportionment. If, however, the claims folder contains significant information which does not appear to have been considered, it will be brought to the attention of the VSO prior to award action.

26.04 ADJUSTMENT OF APPORTIONMENTS MADE UNDER REVOKED CRITERIA

Apportionments will be encountered that are not in accord with current instructions, having been made under older criteria. These cases will be adjusted only when they otherwise require award action, or the veteran, the veteran's representative, or the apportionee alleges hardship. In either instance, adjustments will be accomplished as of the date of last payment in order to avoid the creation of an overpayment.

26.05 PROCEDURE—GENERAL

When a claim for apportionment is received, an immediate determination will be made as to whether [or not] there is a bar to an apportionment under [38 CFR 3.458.] (See also par. 26.09a.) If not, simultaneous development with the claimant and the veteran will be undertaken.

a. **Withholding Pending Development.** A running award to the veteran will be amended to provide for a type 1, Withholding, for the benefit of the apportionment claimant(s), effective the first day of the month following the month in which the claim for apportionment is received or date of last payment, whichever is later. The amount to be withheld will be determined, as provided in [38 CFR 3.451,] according to the apparent equities as reflected by the evidence in the case.

b. **Development and Due Process.** Although the primary obligation of the VA is to the veteran, apportionment may be authorized except when the veteran would suffer undue hardship; therefore

(1) It is essential that development is adequate to permit proper determination of substantial equity based on the factual circumstances of the parties as required for special apportionments under [38 CFR 3.451.]

(a) The veteran will be apprised of the allegations of need made by the dependent and requested to furnish a statement as to the amount and frequency of any contributions being made to support the dependent or, if none, an explanation of the reasons for nonsupport.

(b) Both the veteran and the dependent will be requested to furnish a statement of net worth and of annual income and expenses.

(c) If there is conflicting information as to the veteran's contributions for support, and that information is relevant and necessary to the determination, request will be made for proof of the contributions; e.g., canceled checks, receipts, etc.

NOTE: When the veteran is receiving additional benefits for dependents and the evidence shows he or she is not reasonably contributing to their support, hardship on the veteran would not result from apportionment of the additional amounts payable for such dependent(s).

(2) Both parties will be advised that the evidence requested or which they desire to present must be furnished within 30 days, and that a decision will be made at that time on the basis of the evidence of record unless extension of time is requested for good cause.

(3) In addition, the veteran will be advised:

(a) Of any withholding established;

(b) The statutory authority for apportionment (38 U.S.C. 3107);

(c) The effective date from which an apportionment may be made on the basis of the pending claim; and

(d) That his/her award will be reduced by the monthly amount of any apportionment authorized.

c. **Effective Date of Award Actions.** Upon approval of an apportionment (par. 26.03), the veteran's award will be adjusted and payment of benefits to the apportionee will be made effective as follows [(38 CFR 3.400(e)):]

(1) Original Claims—In accordance with the facts found.

(2) Other than original claims—from the first day of the month following the month in which a claim is received for apportionment of a veteran's award. However, when payments to him/her have been interrupted, apportionment will be effective the day following the date of last payment if a claim for apportionment is received within 1 year from that date.

(3) If the total amount available is increased by including the apportionee(s) as an additional dependent, and payments are withheld for this purpose, the apportionee will be awarded the available difference between the amount previously paid to the veteran and the total payable to the end of the current month. [(38 CFR 3.650)] The apportioned share will be payable thereafter.

d. **Notification to Veteran and Apportionment Claimant.** Both the veteran and the party claiming the apportionment will be advised of the decision by dictated letter and will be furnished due process notice of their right to representation; to present new evidence, including opportunity for a personal hearing; and of their right under [38 CFR 19.118(a)(2)] to appeal the decision by filing a notice of disagreement within 60 days from the date of the letter.

e. **Notice of Disagreement.** When a notice of disagreement with an apportionment determination is received, it should be treated as a contested claim and the procedures in paragraph 36.09 will be for application.

[f. **Privacy Act Considerations.**] Information in the claims folder which directly affects payment or potential payment of a claim for apportionment, will be coequally disclosed to the veteran and to the person(s) claiming the apportioned share upon request of either party. [The Privacy Act may forbid total disclosure of the correspondence or other submissions from either party to the other, but information vital to the decision which is to be made, such as income of the parties, will be separately furnished.]

26.06 ROUNDING OF AMOUNTS

Apportioned amounts will generally be rounded to even dollars. Pursuant to [38 CFR 3.112,] when the amount to be shared by two or more apportionees involves a fraction of one cent, the fractional amount will be disregarded even though the total of the apportionees' shares is less than the amount withheld as a type 1, Withholding. (See par. 15.23b.)

26.07 SIMULTANEOUS APPORTIONMENT OF SUBSISTENCE ALLOWANCE

The provisions of paragraph 23.10 will be followed in order that overpayments and differences in effective dates of apportionments of compensation or pension and subsistence allowance may be avoided when the two benefits are being received concurrently.

26.08 APPORTIONMENT INVOLVING FOREIGN RESIDENTS

a. **Jurisdiction.** Permanent transfer of a claims folder to WRO (Washington regional office) because of residence in an area outside the jurisdiction of any other regional office is required only when the veteran is the foreign resident. When the foreign resident is a dependent of a veteran residing within the jurisdiction of a regional office other than WRO, a claim for apportionment by or on behalf of such dependent will be adjudicated in that regional office. An apportioned award to or for such dependent, if in order, will be prepared and processed in the usual manner, but all checks identified by the foreign mailing code will be automatically referred for the necessary special handling.

b. **Treasury Department List.** The award of a veteran will be apportioned for a dependent residing in a "listed" country (par. 5.13a) only if the requirements of 38 CFR 3.653(c) are met. Otherwise, the veteran's award will be adjusted as of date of last payment by elimination of that dependent. If the person living in a "listed" country is the veteran, the following action will be taken:

(1) If the veteran is an alien, payments will be discontinued effective date of last payment. An award of disability *compensation* may be made upon receipt of a claim to or on behalf of dependents of the veteran not similarly situated.

(a) The rate authorized will not exceed the amount which would be payable to the dependents of the same class if the alien veteran were dead.

(b) Such payments may not be authorized, however, unless the continued existence of the veteran and, except when the veteran has a static disability, his/her continued basic entitlement is established. Controls will, therefore, be maintained for this necessary information.

(c) When more than 1 year has elapsed since the veteran was last known to be living, or continued entitlement is otherwise not established, the award to the dependent will be terminated effective date of last payment.

(2) It will not be necessary to discontinue payments to a citizen of the United States upon notice of an address in a "listed" country, since payments will be automatically deposited in the special deposit account in the Treasury. However, if the facts warrant, an apportioned award may be made under 38 CFR 3.451 to his/her dependents not similarly situated.

(a) A control, as provided in subparagraph (1)(b) above, will be maintained for necessary information at yearly intervals.

(b) When continued existence and entitlement are not established, the award to the veteran and/or a dependent will be discontinued effective date of last payment.

26.09 AWARDS SUBJECT TO OFFSET OR RECOUPMENT

a. **Total Offset for Recoupment.** When the veteran's total benefit is to be withheld because of the receipt of readjustment or disability severance pay or offset under 38 U.S.C. 351, his/her award will not be subject to apportionment until the offset or recoupment has been completed.

(1) If consideration of an apportionment is otherwise in order, a control will be established for 30 days prior to the approximate date of complete recoupment to ascertain at that time whether an apportionment is still in order. Any persons claiming an apportionment in such cases will be informed of this deferral and the reason therefor.

(2) At the expiration of the control period, the apportionment, or withholding if development is necessary, will be made effective as of the first day of the month following the month in which the recoupment was completed.

(b). **Partial Offset for Recoupment.** When a veteran is entitled to benefits for two or more disabilities and the amount to be recouped is only the amount payable for the disability or disabilities on which the offset under section 351 or readjustment or disability severance pay was granted, the amount to be apportioned or withheld will be determined on the basis of the balance of compensation payable to the veteran and not from the total award. If this balance of compensation does not permit payment of a reasonable amount to any apportionee, no apportionment will be made.

26.10 APPORTIONMENTS FOR ADOPTED CHILDREN

Title 38, Code of Federal Regulations, section 3.458(d) restricts the apportionment for a child legally adopted by another person to the additional compensation payable on account of such child. As an example of applying this rule, when the relationship is given as veteran, spouse and four children, with two of the children adopted and in custody of a third person, and an apportionment is made on the basis of a total 100 percent rating in effect, the veteran would be allowed additional compensation on account of spouse and two (unadopted) children. The additional amount payable for the two adopted children would be paid under the apportionee award to be equally divided between the adopted children.

26.11 AWARD TO A SPOUSE UNDER 38 CFR 3.850(a)(2)

a. **General.** An award to an incompetent veteran's spouse ("as wife" or "as husband") for the use of the veteran and dependents will be authorized for the full benefit payable to the veteran, in accordance with 38 CFR 13.57. Such an award is not an "apportionment" but an award to a spouse in a fiduciary capacity and, as such, is subject to apportionment for other dependents of the veteran not being provided for by the spouse. These awards to apportionees will be preceded by VA Form 21-592, Request for Appointment of a Fiduciary, Custodian, or Guardian, action and prior recognition by the VSO except that an immediate award of the unapportioned amount may be made with concurrent submission of VA Form 21-592 to the VSO under the conditions and in the manner provided in subparagraph c below.

b. **Award Action.** Prepare an award to a spouse, "as wife" or "as husband," as any other award to a fiduciary on behalf of a veteran under payee number "00," "50" or "60", except that it will be made payable to the spouse with the legend "Wife of" or "Husband of" *(veteran's name)*. NOTE: *If a direct deposit account exists, ~~the award action will be taken to terminate the direct deposit account. Award payments to resume payments of the spouse will be initiated immediately~~.*

Terminate DD 851

[(1) For any period of entitlement prior to the first of the month in which the award action is taken, prepare the award to withhold retroactive payments under withholding code 1 pending receipt of the VSO certification of the spouse-payee.

(2) When the VSO certification is received, process an amended award to release any withheld benefits in accordance with the certification.]

c. **Immediate "As Wife" or "As Husband" Award**

(1) **Conditions.** An immediate award may be made to a spouse, "as wife" or "as husband" when the following conditions are present:

(a) The veteran and the spouse are not estranged.

(b) Marital proof has been established or there is a prima facie showing thereof.

(c) There is no information of record that the spouse is unfit.

(d) There is no evidence of record of a court-appointed fiduciary.

(2) **Methods of Effecting Payment.** Payments to the spouse will be authorized by award action. The following notation will be placed as "remarks" on the award document: "Award 'as wife' or 'as husband' under M21-1, paragraph 26.11c." The fiduciary file location must be entered on the 102 or 601 screen as appropriate.

(3) **Notification**

(a) An extra copy of the award document will be made and attached to VA Form 21-592 for release to the VSO.

(b) The spouse-payee will be notified of the award by a Target System generated letter. In the event a dictated letter is required to fully inform the spouse of an award authorized, it will contain the following:

"Payment of this award will be made to you in a fiduciary capacity. You must agree to use the payments for the benefits of the veteran and any of the veteran's dependents in your custody, as well as for your own benefit.

A representative of the VA will contact you in the near future to explain your duties and discuss any arrangements that may be necessary for the use of the money paid."

[(c) When retroactive benefits have been withheld, suppress the Target award letter and use a dictated letter to notify the spouse-payee of all the facts in the case. Specify the basic award data (rates, amounts withheld, effective dates, reason for payment adjustment) and the fact that retroactive benefits have been withheld pending official certification of the person to receive payments in the veteran's behalf. In addition, advise him/her that the withheld benefits will be released in accordance with this certification.]

(4) **Action by the Veterans Services Officer.** The VSO will subsequently certify the spouse or inform the Adjudication Divison of the payee selected. When necessary, the VSO may suspend payments under the "as wife" or "as husband" award and proceed with the selection of a payee. If the VSO certifies a different payee to receive payments payments will be effected under existing procedures in accordance with the VSO's certification, entering the fiduciary file location if not previously entered. Until other affirmative action is taken by the VSO, payments to the spouse will continue.

d. **In All Cases.** When, subsequent to an award to a spouse, "as wife" or "as husband," the Adjudication Division receives information which indicates that the spouse is not providing for the veteran or the veteran's dependents, or may otherwise be deemed unsuitable to act in a fiduciary capacity fully inform the VSO of the circumstances. Request the VSO investigate and recommend appointment of another payee, if appropriate. Control the case for VSO response.

26.12 INCOMPETENT VETERANS

a. **General.** Except when a fiduciary (including a veteran's spouse when paid "as wife" or "as husband") is providing for dependents, the veteran's award will be apportioned for the benefit of such dependents as warranted by the facts in the individual case.

b. **Not Hospitalized.** When a formal rating of incompetency has been made (par. 54.01d) in the case of a nonhospitalized veteran, take action as provided in paragraph 28.02. If the veteran is living with a spouse and/or child(ren), take immediate action to provide for an award to the spouse "as wife" or "as husband" (par. 26.11), or apportionment for such dependents (without need for a claim therefor), generally in the full amount of the benefits payable to the veteran, pending appointment of a fiduciary.

c. **Veteran Hospitalized**

(1) If notice of a judicial decree of incompetency of a veteran and/or appointment of a guardian is received, see paragraph 12.05a.

(2) If notice of hospitalization not constituting a judicial determination of incompetency is received, see paragraph 12.05b.

(3) Action required for the referral of VA Form 21-592 for the appointment of a fiduciary, preparation of an institutional award and authorization of apportionments are set forth in paragraphs 28.07b, 28.08 and 28.17.

(4) See also paragraph 26.11c, permitting an immediate "as wife" or "as husband" award.

26.13 ADJUSTMENT AND DISCONTINUANCE OF APPORTIONED AWARDS

Predetermination due process notice of adjustment or discontinuance of an apportioned award will be furnished as required under the criteria of paragraph 14.36 without regard to the benefit apportioned.

a. **Reductions Under 38 CFR 3.105(e).** When a veteran's award is to be reduced under 38 CFR 3.105(e), the case file will usually have sufficient evidence for reapportionment under 38 CFR 3.451, so that simultaneous adjustment may be made in the awards to the veteran and apportionee(s). Of course, if the reduced rate payable to the veteran does not permit payment of a reasonable amount to the apportionee(s), the apportionment will be discontinued as of the effective date of reduction.

b. **Retroactive Increases.** Only in exceptional cases, as dictated by the equities and needs of the involved persons, will retroactive increases be made subject to apportionment.

c. **Terminations.** In addition to those instances in which apportionment is to be terminated because of discontinuance of the veteran award for any reason, or reduction of the veteran's benefit to a rate so that apportionment cannot be justified under the applicable criteria, discontinuance of apportionments will be required upon the happening of any of the contingencies as specified below. Termination of an apportionee award will be effected by use of the 406 screen unless award action is required in accordance with paragraph 17.02c. Simultaneous adjustment in the veteran award by amended award action will usually be required.

(1) **Death of Veteran.** See paragraph 26.15.

(2) **Death of Apportionee.** Title 38, Code of Federal Regulations, sections 3.1000(b)(1) and 3.500(g). See paragraphs 26.16 and 24.16.

(3) **Divorce of Wife/Husband-Apportionee.** See paragraphs 8.09 and 24.16.

(4) **Termination of Child's Entitlement**

(a) **Marriage of Child.** Title 38, Code of Federal Regulations, section 3.500(n). See paragraph 24.16b(2) and 24.16c.

(b) **Termination of School Attendance.** Title 38, Code of Federal Regulations, section 3.667. See paragraph 10.07c.

(c) **Entry on Active Service.** Title 38, Code of Federal Regulations, section 3.503(b).

(d) **Election of Dependent's Educational Assistance.** Title 38, Code of Federal Regulations, section 21.3023(a). See paragraph 26.17.

(5) **Cessation of Dependency of Parent.** Title 38, Code of Federal Regulations, section 3.660(a)(2). [ ]

(6) **Whereabouts of Apportionee Unknown.** Title 38, Code of Federal Regulations, section 3.500(t).

(7) **Election of Federal Employee's Compensation.** [Title 38 CFR 3.708.] See paragraph 29.21b.

d. **Adjustment Due to Changes in Status.** When a change in the financial status or need of either party is reported, the procedure set forth in paragraph 26.05 will be followed and a determination made as required (see par. 26.03). Adjustments will be accomplished as of the date of last payment to avoid the creation of an overpayment.

26.14 NOTICE OF VETERAN'S DIVORCE FROM APPORTIONEE

(See par. 8.09.)

26.15 ADJUSTMENT IN APPORTIONEE AWARD AT DEATH OF VETERAN

Apportionee awards in running award status at the time of the veteran's death will be terminated simultaneously with the veteran award by the processing of the NOD action. (See par. 31.03.) Posthumous adjustments in apportionee awards, as an exception to the general rule expressed in paragraph 26.02, will not require processing with an accompanying veteran award unless an adjustment in the veteran's record is otherwise required, since such adjustments may be effected by one-time payment awards processed to the Hines DPC in hard copy. [ ]

26.16 DEATH OF APPORTIONEE

a. An award to a deceased apportionee will be terminated [ ] effective as of the date of last payment or the first day of the month of death, whichever is earlier. Any apportioned share not actually paid to the apportionee through the end of the month of death will be restored to the veteran or reapportioned to other dependents, as the facts may warrant. ([38 CFR 3.1000(b)(1)])

b. When the rate or continuance of the award to the veteran is contingent upon the existence of the deceased apportionee, reduction or discontinuance of the veteran's award will be effected as of the end of the [month] in which the apportionee died. For example, when the award to a veteran rated 50 percent is apportioned for a spouse, upon the death of the spouse in October the apportioned award will be terminated as of the date of last payment or as of the first day of the month of death, whichever is the earlier. The veteran's award will then be amended to authorize payment of any amounts not paid the apportionee and to reflect the discontinuance of the additional amount of compensation payable on the spouse's account as of [the first] of the following [month] [(38 CFR 3.500(g))]. (See also par. 24.16.)

26.17 ELECTION OF DEA BY APPORTIONEE

a. **Spouse.** When a spouse has entitlement to DEA, there is not prohibition against receipt of an apportionment of the veteran's compensation ([38 CFR 3.707(b) and 21.3023(d)]).

b. **Child**

(1) **Under Age 18 or Helpless.** Educational assistance allowance or special restorative training allowance may be paid concurrently with pension, compensation or DIC for a child based on service of one or more parents. Likewise an apportionment of a veterans benefit may be made to such a child who is receivng DEA benefits if the individual case warrants such action ([38 CFR 21.3023(b)]). (See also par. 42.23 b and c. [ ])

(2) **Age 18 or Over Not Helpless.** A child who is eligible for DEA and is also eligible for pension, compensation or DIC based on school attendance must make an election as to which benefit he/she will receive. When an election of DEA is made, the child is no longer eligible for pension, compensation or DIC and an apportionment would not be in order ([38 CFR 21.3023(a)]). (See also par. 42.23 b and c. [ ])

CHAPTER 28. INCOMPETENT VETERANS

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CHAPTER 28. INCOMPETENT VETERANS

SUBCHAPTER I. GENERAL

28.01 EFFECT OF DETERMINATION OF INCOMPETENCY AND COMPETENCY ON VETERANS

a. **Determinations.** Competency and incompetency determinations may be made by rating decisions of the VA or by a court decree or both. However, for VA purposes, they may require different actions (see par. 28.12c and 54.01) as the VA is not required to recognize a court-appointed fiduciary for purposes of payment of VA benefits (38 CFR 3.850(A)). (See par. 54.01f.)

NOTE: Due Process Consideration Prior to Determination. The requirements of due process notice and opportunity for hearing must be afforded as provided in paragraph 14.37 prior to any VA rating of incompetency except when the beneficiary has been declared incompetent by a court of competent jurisdiction or if a fiduciary has been appointed for the beneficiary based upon a court finding of incompetency (38 CFR 3.353(E)). (See also par. 12.05b re procedures in cases falling under par. 14.37b.)

b. **Estate Limitations.** Payments of pension, compensation or emergency officers' retirement pay to veterans institutionalized by the United States or any political subdivision while rated incompetent by the VA, without a spouse or child and whose estate equals or exceeds $1,500 must be terminated (38 CFR 13.75(B) and 3.557). If, however, the veteran is held incompetent by the court but is rated competent by VA, this estate limitation does not apply and benefits will continue to be paid. (See subch. III, this chapter.)

c. **Restoration of Competency.** Following a rating of competency by the VA moneys, withheld because of excess estate while the veteran was institutionalized will only be paid after such rating or removal of legal disability has been in effect for 6 months following discharge from the institution. Payment, if in order, will be a lump sum of all withheld moneys. (See par. 28.19.)

28.02 VETERANS RATED INCOMPETENT—NOT INSTITUTIONALIZED

a. **Veterans Services Officer Notified.** When a noninstitutionalized veteran in receipt of pension, compensation or retirement pay is *rated* incompetent by formal rating (or evidence of court adjudication of incompetency is received), appointment of a fiduciary will be requested on VA Form 21-592, Request for Appointment of a Fiduciary, Custodian or Guardian, except when an award to a spouse may be made under 38 CFR 13.75 (par. 26.11). (See par. 12.01 for preparation of VA Form 21-592, and 38 CFR 3.451, 3.453 or 3.454, regarding apportionments pending the appointment of fiduciary.) In addition, VA Form 29-4347, Notification of Rating of Competency or Incompetency of Veteran or of Appointment Recognition, Change or Discharge of Fiduciary, will be completed and referred to the Insurance activity, as required, in accordance with paragraph 28.05.

b. **Action by the Veterans Services Officer.** The VSO will develop information as to the veteran's social, economic and industrial adjustment.

(1) If the VSO concurs in the rating of incompetency and determines that a fiduciary is desirable, appointment will be effected and certified to Adjudication by VA Form 27-555, Certificate of Legal Capacity To Receive and Disburse Benefits. No certification action will be required in cases of concurrence with the payment of benefits to the veteran's spouse.

(2) If the VSO concludes that the reasonable protection of the interests of the veteran can be accomplished with followup personal contacts, certification on VA Form 27-555 of *supervised direct payment* will be made. The veteran will be paid direct. (See par. 12.17.) It should be noted that 38 CFR 3.557 applies to this type of case, even though the veteran is paid direct.

(3) If the VSO concludes that the veteran is competent to administer the funds payable, a statement to that effect, together with all evidence upon which the opinion is based will be furnished and referred to the rating board for reconsideration of competency. In addition, certification on VA Form 27-555 of supervised direct payment will be furnished by the VSO.

(a) The rating board has sole authority to determine the question of competency 38 CFR 3.353 and, if upon reconsideration, the veteran is rated competent, payment will be made direct.

(b) When incompetency is confirmed, the Authorization activity will act on the certification by the VSO and authorize supervised direct payment as provided in subparagraph (2) above. A copy of the award in either instance will be forwarded with a routing slip to the VSO.

(c) For rating board action, see paragraph 54.01.

c. **Payments to Fiduciary or Spouse.** If a fiduciary is appointed, action will be taken to release payments to the fiduciary as set forth in paragraph 12.02a. Payments to a spouse ("as wife or husband") for the use of the veteran and his/her dependents will be authorized as provided in paragraph 26.11.

28.03 AWARDS PENDING VA RATING AS TO COMPETENCY OR CERTIFICATION OF FIDUCIARY

No action will be taken to suspend or terminate direct payment to the veteran on the basis of a *proposed* rating of incompetency. Direct payments will also continue pending certification of a fiduciary (or recommendation for supervised direct payment) requested on the basis of an adjudication of incompetency by a court of jurisdiction or by VA rating (par. 12.05a).

28.04 FAILURE OF INCOMPETENT VETERAN TO REPORT FOR EXAMINATION

a. When an incompetent veteran is scheduled for a physical examination, the fact of incompetency will be indicated on VA Form 21-2507 by typing the word "incompetent" after the name of the veteran and the word "fiduciary" in the address space followed by the name and address of the fiduciary. Since computer-generated VA Form 21-2507a shows the name and address of the fiduciary, with descriptive legend, and the name of the veteran, no additional indication is required when the request for examination is made on this form.

[b. If an incompetent veteran fails to report for an examination, predetermination notice shall be afforded to the veteran before the account is reduced or suspended. See paragraph 24.08.

c. If you send an incompetent veteran a predetermination notice of suspension or reduction of benefits, also send a letter to the fiduciary or next of kin with a copy to the VSO explaining the necessity of the examination, and that failure to report could result in discontinuance or reduction of benefits. Request the VSO's cooperation in having the veteran report for the examination. When the fiduciary is a bank, trust company or other corporate fiduciary, send the letter to the person listed as next of kin or friend.]

28.05 NOTIFICATION OF CHANGES IN COMPETENCY STATUS AND FIDUCIARIES TO INSURANCE ACTIVITY

a. **Preparation of VA Form 29-4347.** In order that the status of incompetent veterans of the Regular Establishment, World War I, World War II, or the Korean conflict may be of record for all insurance purposes (except as provided in subparagraph c below), VA Form 29-4347, Notification of Rating of Competency or Incompetency of Veteran, or of Appointment, Recognition, Change or Discharge of Fiduciary, will be prepared in duplicate over the signature of the Adjudication Officer in the following instances:

(1) When the veteran is rated incompetent by the VA or held to be incompetent by a court of jurisdiction.

(2)When a fiduciary has been court appointed or a Federal fiduciary recognized, when there is a change in fiduciary, and when any fiduciary is discharged or Federal fiduciary relationship terminated.

(3) When the spouse of the veteran is recognized pursuant to VAR 5057, and when such recognition is terminated.

(4) When an institutional award is made to the Director of a VA [medical center] or superintendent or chief officer of a State [institution] or contract hospital or nursing home; and when such awards are terminated.

(5) When a veteran previously rated incompetent is rated competent by the VA or has been adjudged competent and restored to his/her legal rights by a court.

NOTE: In reporting discharge of guardian or termination of custodianship and restoration of competency (subpars. (2) and (5) above), the latest address of record of the veteran will be inserted in the "Remarks" block of VA Form 29-4347.

b. **Transmittal of VA Form 29-4347.** [ ] Identification of insurance numbers [will be obtained by BIRLS (BINQ) inquiry.]

(1) [If the BIRLS record shows] insurance numbers other than "T" or "N," the signed original [VA Form 29-4347] will be routed to the insurance office of jurisdiction (Philadelphia or St. Paul). The duplicate will be filed in the claims folder.

(2) If the [BIRLS record reveals] no insurance record or [shows] "T" or "N" numbers only, it will be filed down in the claims folder for record purposes.

c. **When No Action Is Necessary.** When the claims folder contains a VA Form 29-4347 bearing the notation "No Record of Insurance" or showing "T" or "N" numbers only or other information that there is no active insurance, notification of changes in competency status and fiduciaries to the Insurance activity will not be required.

d. **Requests Initiated by Insurancy Activity.** See paragraph 30.09.

SUBCHAPTER II. INSTITUTIONAL AWARDS

28.06 NOTICES RELATING TO INCOMPETENT VETERANS ADMITTED TO A VA INSTITUTION OR NON-VA INSTITUTION AS A VA BENEFICIARY

a. **Receipt of Notice of Admission.** When [a VA-rated] incompetent veteran in receipt of compensation, pension, or retirement pay, or who has a service-connected disability, or has a claim pending [is hospitalized by the VA or enters a domiciliary or other] institution as a VA beneficiary, VA Form 10-7131 attached to the claims folder will be received in the Adjudication Division in triplicate. (See par. 25.01.)

b. **Action on VA Form 10-7131.** The claims folder will be reviewed to determine what actions, if any, are required in accordance with paragraph 25.02.

(1) Whenever a special report, hospital summary, notice of placement on non-bed care status, notice of discharge, or any other information or report is required from the institution, the proper items in part III of VA Form 10-7131 will be completed and the original of the form returned to the originator.

(2) If payments are being made on behalf of the veteran to a [fiduciary], spouse-payee under VAR 5057, or [to a veteran via supervised direct payment,] one copy of VA Form 10-7131 will be forwarded to the Veterans Services Officer having jurisdiction over the fiduciary.

(3) If the veteran does not have a spouse or child, and compensation, pension or retirement pay is payable or being paid, asset information will be requested by checking item 8, part III, VA Form 10-7131.

(a) When this item is checked if the claims folder reveals any assets, the assets and their estimated value should be shown in the "Remarks" of part III, VA Form 10-7131. If there are no known assets the statement "No assets shown" will be placed in "Remarks."

(b) The original of VA Form 10-7131 will be sent to the originator, and one copy to the Veterans Services Officer having jurisdiction over the veteran's fiduciary.

(c) For exchange of asset information between VA [medical center] and regional office, see paragraph 28.14.

(4) Copies of VA Form 10-7131 not used in required actions will be destroyed as duplicate material in accordance with Records Control Schedule VB-1, [part I].

c. **Subsequent Incompetency.** If a veteran is rated [ ] incompetent subsequent to admission, part III of the file copy of VA Form 10-7131 will be reviewed to ascertain if all necessary items were requested. If any additional information, reports or summaries are required as a result of the veteran's incompetency, a new VA Form 10-7131 will be initiated. (See par. 25.06.)

28.07 PREPARATION OF INSTITUTIONAL AWARDS

a. **General.** Under the provisions of VAR 1852(A) (38 U.S.C. 3203(b)(3)), when an incompetent veteran is being furnished hospital treatment, institutional, domiciliary or nursing home care (public or private), an award of all or any part of the pension, compensation or retirement pay which is payable may be made to the chief officer of the institution. Although these institutional awards will generally be restricted to those cases in which a fiduciary has not been appointed, or recognized, they may also be made on behalf of a veteran for whom a fiduciary has been appointed, but *only* if specifically requested by the Veterans Services Officer. The "chief officer" to whom payments will be authorized will be, in the case of a VA [medical center], the Director, or in non-VA institutions, the chief officer as certified under VAR 5061 by the Veterans Services Officer.

NOTE: The chief officer of a nursing home will not be certified under VAR 5061, if the veteran is being maintained in that home under 38 U.S.C. 620. (See subpar. f below.)

(1) **Foreign Cases.** In foreign cases, instructions applicable to Veterans Services Officers will apply to the VSO of the office of jurisdiction. (See par. 12.01d(2).)

(2) **Transfer of Veteran to Another Institution.** Institutional awards will not be interrupted nor will action be taken to change the name of the chief officer-payee except upon the veteran's permanent transfer to another institution [and VSO certification of any non-VA chief officer-payee.] When award action is not otherwise required, in such cases the change of name of the chief officer-payee will be effected [in accordance with paragraph 17.18]. (However, see subpar. f below re transfer to nursing home, and also par. 25.07 re action on VA Form 10-7132, and par. 12.12b re notice of changes to Veterans Services Officer.)

(3) **Notification of Award.** VA Form 21-6776 will be used as the attachment to VA Form 20-822 to notify the Director or chief officer of the institutional award. In addition, VA Form 29-4347 will be completed and referred to the Insurance activity in accordance with paragraph 28.05.

b. **Initial Action—Need for VA Form 21-592.** Upon receipt of notice of commitment constituting a judicial determination of incompetency (par. 14.37b), the procedures in paragraph 12.05a will be initiated and consideration given to immediate payment to a spouse payee (par. 26.11), apportionment to dependents (par. 28.08) or institutional award under this paragraph; otherwise, development under paragraph 12.05b will be completed. VA Form 21-592 will be required for VSO certification *prior to* an award to a non-VA institution.

[(1)] **Private Institutions.** When a veteran is maintained in a private nursing home [ ] or any other type of private institution (not at VA expense), an institutional award will not be made prior to release of VA Form 21-592 to the Veterans Services Officer for the regional office of the veteran's residence and receipt of necessary certification.

(2) **VA Institutions.** If maintained in a VA institution, [send] VA Form 21-592 and a copy of the institutional award ~~to the Director of a VA institution (subpar. d below)~~ [ ] to the Veterans Services Officer only in those cases in which the veteran has a spouse or child. [ ] (See pars. 26.11 and 28.08.)

(3) **Controls To Be Maintained.** As in any cases in which awards are subject to reduction under [38 CFR 3.551] and/or discontinuance under [38 CFR 3.557], the controls required in paragraphs 25.10 and 28.13 will be maintained.

c. **Assignment of Payee Number**

(1) Institutional awards will be made under payee number 00 (veteran), except that payee number 99 will be assigned when the institutional award is required as an additional award under [38 CFR 3.852] (a) (2) or (3) or (b) (2) or (3) and there already is an existing award to a fiduciary under payee number 00.

(2) Institutional awards under payee number 99 will be handled as apportionee awards (will create a type C (apportionee) master record), and any amounts not paid under such award must be shown in the award under payee number 00 as amounts awarded or withheld (including the amount paid under payee number 99, which will be carried as a type 1 Withholding).

d. **Awards to Directors of VA Institutions**

(1) An institutional award to the Director of a VA medical center [is] effective as of the date of last payment to the veteran or on initial or resumed awards, from the date of entitlement, as provided under [38 CFR 3.401(d)(2)], without need for a VA Form 21-592 except as provided in subparagraph b(2) above. Funds [ ] awarded are [ ] for [ ] comforts and desires [ ] not ordinarily furnished in the regular support, care, treatment and maintenance provided by institutions, and for such other expenses as are clearly for the benefit of the veteran.

(2) These awards will be at the full rate otherwise payable subject to any amounts apportioned or amounts withheld under [38 CFR 3.551.] They will *not* be subject to a type 3 Withholding to PFOP (personal funds of patients). However, the Director will place all funds not expended for the veteran to his/her credit in the PFOP account maintained at the station.

e. **Awards to Chief Officers of Non-VA Institutions.** Prior to authorizing an institutional award to the chief officer of a non-VA institution, [obtain] a certification of the official (not the person) authorized to receive and disburse funds. (See subparagraph b(1) above.)

(1) [Make] the award [ ] effective as of the 1st day of the month in which the award is approved or the date of last payment to the veteran, whichever is the later, as provided under [38 CFR 3.401(d)(1).]

(2) [ ] Under payee number 00 (see subpar. c above), [ ] provide a type 3 Withholding (for deposit in the PFOP account maintained at the Hines DPC) of all sums otherwise payable in excess of the amount paid as an apportionment or awarded to the institution (including amounts payable for any period prior to the effective date of benefits payable to the chief officer of the institution).

(3) [Do] not authorize a monthly rate in excess of $60 a month. When the award is apportioned and payments to the institution are reduced to $25 monthly under [38 CFR 3.852(b), enter] the additional amount withheld [ ] as a type 1 Withholding. (See par. 15.34b(6) re multiple withholdings.)

(4) When the veteran does not have a spouse, child or dependent parent, the amount payable as an institutional award will not exceed $60 per month unless the Veterans Services Officer recommends the payment of all or any part to the chief officer for the veteran's use and benefit when required to adequately provide for the needs of the veteran and avoid the necessity for appointment of a fiduciary.

(5) When the veteran has a spouse and/or child, or a dependent parent, see paragraph 28.08.

(6) If an original or reopened award involving a withholding for PFOP is prepared with a future commencing date, [defer] processing to the Hines DPC [ ] in accordance with paragraph 15.27b(1)(b).

f. **Transfers for Nursing Home Care Under 38 U.S.C. 620.** [A veteran who has been furnished VA hospital care or any person who has been furnished care in an Armed Forces hospital and who will become a veteran upon discharge from the Armed Forces hospital may be transferred to a public or private nursing home for care at VA expense. A service-connected veteran may be directly admitted to nursing home care at VA expense if the nursing home care is for a service-connected condition (38 U.S.C. 620). Awards for veterans transferred or directly admitted for care at VA expense *are subject* to reduction and discontinuance under 38 CFR 3.551, 3.552 and 3.557.] The controls required by paragraphs 25.10 and 28.13 will be maintained until notification is received that care no longer is being provided at Government expense.

(1) If an institutional award to the Director of a VA medical center was in effect at the time of a veteran's transfer to a nursing home, [continue the] award [ ] until payment may be made directly to the veteran or until VA Form 27-555 is received from the Veterans Services Officer authorizing payments to a fiduciary.

(2) The VA medical center will furnish a summary to the appropriate regional office upon the veteran's transfer to a nursing home [if there is a change in competency.] A rating board will review the summary and [ ] ascertain if the veteran is still incompetent (see par. 54.01) and whether he or she is entitled to aid and attendance or the housebound rate.

(a) If the rating board determines the veteran [is] competent, [follow] the procedures set forth in paragraphs 28.11b and 28.12c. [ ] Necessary controls will be established to release withheld funds (see par. 28.19).

(b) If, however, the rating of incompetency is continued and no fiduciary has been appointed, a VA Form 21-592, if not previously sent, will be sent to the Veterans Services Officer calling attention to the fact of nursing home placement, the date of the veteran's transfer to the nursing home, a notation of [possible] release in 6 months and the name and addresss of next of kin. A copy of the hospital summary will be attached to the VA Form 21-592.

(3) Nursing home care will be authorized and administratively controlled by the transferring VA health care facility. VA Form 10-7132 will be dispatched by the VA health care facility of jurisdiction to notify the appropriate regional office of the veteran's release *from* the nursing home [or when care at VA expense is terminated.] Any adjustment in his/her award made necessary by the release will be effected without delay. If no fiduciary has yet been appointed, [continue] the institutional award to the Director of the VA medical center [ ] but [send] a copy of the VA Form 10-7132 containing notice of the release [ ] to the Veterans Services Officer.

(4) When payments for an incompetent veteran are discontinued because of the $1,500 estate limitation, either before or after transfer to a nursing home, [follow] the procedures established in subparagraph (2) above. [ ] If, after such transfer, the payment may be resumed because the veteran's estate is reduced to $500 or less, [make] the resumed award [ ] payable, in the absence of other certification by the Veterans Services Officer, to the Director of the transferring VA medical center. (See pars. 28.16 and 28.18.)

28.08 AWARDS TO DEPENDENTS

a. **Noninstitutionalized Incompetent Veterans.** When a veteran has been rated incompetent, if apportionment would be in order, [take] this action [ ] immediately *unless* immediate payment can be made to a fiduciary or to the spouse as "wife or husband" under 38 CFR 13.57. No claim [is] required and, generally, the full monthly rate otherwise payable [is] the apportioned share for his/her dependents.

b. **Institutionalized Incompetent Veterans.** When an incompetent veteran receiving institutional care by the United States or political subdivision thereof has a spouse, child or dependent parent who is not being adequately provided for by an award to a fiduciary or spouse as "wife or husband," action may be taken as follows:

(1) **Immediate As Wife or Husband Award.** When an immediate award may be made to the spouse "as wife or husband," subject to [concurrent submission of VA Form 21-592 to] the Veterans Services Officer (see par. 26.11), such action will be taken in lieu of an apportionment and the spouse will be awarded the full benefit otherwise payable to the veteran.

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(2) **Apportionment to Dependents With an Institutional Award.** When an institutional award of pension to a non-VA institution is being made, the provisions of VAR 1454(A) will apply to limit the institutional payments to $25 with an award of the balance to the dependents.

(3) **Estranged Spouse.** When an incompetent married veteran is receiving disability pension [as a single veteran and] is hospitalized in a VA [medical center, the award] is subject to reduction under VAR 1551(C) on the basis of estrangement from or failure to reasonably contribute to the support of his/her spouse. [However,] the difference between [$60] and the rate payable [to a veteran living with a spouse] may be paid as an apportionment when:

(a) There is a claim therefor; and

(b) There is an affirmative showing of hardship (see VAR's 1452(C)(3) and 1454(B)).

(4) **Dependent Parent Cases.** When an incompetent veteran having no spouse or child is hospitalized by the United States or political subdivision thereof, upon [receipt of] a claim therefor all or any part of the benefit otherwise payable may be paid to the dependent parent(s) under VAR 1451, as follows:

(a) In compensation cases, to his/her dependent parent in an amount not less than the amount of such additional compensation payable on the behalf of such parent (par. 26.01a(3)).

(b) In pension cases, when an amount in excess of [$60] is so apportioned it will be subject to reduction after [3] full months of [hospital or nursing home care or 2 full months of domiciliary care.] (VAR 1454 (C) [and (D)].)

(c) When payment has been discontinued under VAR 1557(B), the apportionment, if any, will be made upon the basis of need as determined by the Veterans Services Officer (VAR 1452(C)(2)). (See par. 28.17.)

c. **Veterans Benefits in Suspense.** An initial action suspending payments pending certification of a [ ] fiduciary does not prohibit apportionments which are otherwise proper and consistent with the equities. If an apportionment is made prior to certification of the fiduciary, a copy of the apportionee award(s) will be furnished to the VSO with a request for expedited certification. (See also par. 28.11 re expedited action required upon discharge from institutional care.)

28.09 FDIB AND PFOP ACCOUNTS

a. **FDIB Accounts.** The only FDIB (Funds Due Incompetent Beneficiaries) accounts now in existence are those containing compensation or pension accrued prior to August 8, 1946. Money deposited in these accounts will be disposed of in accordance with the precedents in effect prior to that date. There is authority to dispose of such funds if:

(1) There is a guardian,

(2) There is request for funds [ ], or

(3) There is a rating holding veteran competent.

b. **PFOP Accounts.** On August 31, 1950, all balances in FDIB accounts which represented compensation or pension accruing on or after August 8, 1946 (date of passage of PL 662, 79th Cong.), were transferred to the Directors of the VA [medical centers] in which the veterans were hospitalized for credit to PFOP (Personal Funds of Patients) accounts. On April 30, 1951, moneys which accrued on or after August 8, 1946 were transferred from FDIB to PFOP accounts under field office control and are now maintained by the Hines DPC for cases in which the veteran was [confined or committed] in non-VA [institutions] or if the whereabouts of the veteran was unknown. As a consequence, there are in essence two types of PFOP accounts–those under the control of the Hines DPC and consequence, there are in essence two types of PFOP accounts–those under the control of the Hines DPC and those maintained by Directors of VA [medical centers]. This requires that a distinction must be made in taking award action, as follows:

(1) Awards should *never* provide for a type 3 Withholding, in an institutional award to Directors of VA [medical centers]. Instead, the *total amount payable* is awarded to the Director, VA [medical center], for the account of the veteran. The Director will deposit into the PFOP accounts under his/her control all money not immediately required for veteran's needs (par. 28.07d).

(2) On the other hand, money is not placed in PFOP [accounts] under the control of the Hines DPC except by a type 3 Withholding, [unless] the award specifies that a definite sum goes into PFOP. This is done *only* when a veteran is institutionalized in a non-VA institution (par. 28.07e).

(3) Moneys properly deposited into PFOP accounts constitute payment as though awarded to a fiduciary (Adm. Dec. 815).

(a) **Moneys Properly Deposited.** Money will be considered properly deposited into PFOP when the award actions authorizing the deposits were proper.

(b) **Moneys Improperly Deposited.** Money will be considered improperly deposited into PFOP if improperly deposited in FDIB and subsequently transferred to PFOP, or initially deposited in PFOP after the receipt of notice in the VA that veteran's estate from all sources was in excess of $1,500. Improper deposits will be returned to the appropriation, on the basis of a memorandum signed by the authorizing official, stating that the deposit into PFOP (or FDIB), over the period shown as "No Pay Status" on the award, should not have been made and that the deposit should be returned to the appropriation.

(4) **Action on Severance of Service Connection.** When service connection is severed, moneys in PFOP (Hines DPC) are for payment. Requests for release of such funds will be referred to the local Finance activity for necessary action. Amounts still in FDIB, accrued prior to August 8, 1946, are not payable. (See subpar. a above.)

c. **Funds for Necessary Comforts and Desires–VA Hospitals**

(1) **PFOP Funds.** The Director may use funds in the PFOP account at his/her station or obtain funds from FDIB for necessary comforts and desires.

(2) **FDIB Funds.** To procure funds from FDIB when funds to PFOP are inadequate, the Director will certify the need, showing the amount, to the Adjudication Division having jurisdiction of the claims folder. An institutional award will be prepared showing a lump-sum payment from FDIB.

(a) The award will contain all of the entries required for routine processing, except that in the "Award Data" columns the amount of the lump-sum payment from FDIB will be entered under "Monthly Payment" and "(one sum)" will be entered under "Effective Date." No other entries are required under "Award Data."

(b) The claims folder will be referred to the Finance activity for review of the award. If it is found proper for payment the copy will be noted or stamped "Reviewed by (signature), Station No. _____, Date _____." A VA Form 4-8268, Fiscal Payment and Adjustment Code Sheet, will be prepared for an 06D transaction to pay the desired amount of FDIB for routine transmittal to Hines DPC with other fiscal transactions.

d. **Funds for Necessary Comforts and Desires–Non-VA Hospitals**

(1) **PFOP Funds.** When payments from PFOP accounts are needed for these purposes, they will be released on the basis of a memorandum from the Veterans Services Officer authorizing partial or full release of moneys on deposit. Award action will be taken as provided in paragraph 28.12d and the computer processing of the amended award will result in the issuance of a notice to the Hines DPC Accounting Section. Upon request by the Accounting Section, the Finance activity at the field station involved will take the necessary action to authorize the release or transfer of the moneys on deposit in the PFOP account.

(2) **FDIB Funds.** If payment from FDIB accounts is necessary for these purposes, the Veterans Services Officer will certify the need to Adjudication and an award will be prepared and processed as described in subparagraph c(2) above.

e. **Payment As Accrued Upon Veteran's Death.** See chapter 37, subchapter II section D.

28.10 ADJUSTMENT OF INSTITUTIONAL AWARDS DURING NON-BED CARE

a. **Non-Bed Care.** Non-Bed Care is a temporary release from a hospital for the purpose of determining the veteran's ability to make a satisfactory adjustment outside the hospital and accordingly, whether the patient should be discharged from or returned to the hospital. Release on furlough by non-VA institutions is synonymous with release to Non-Bed Care status.

b. **Notice of Non-Bed Care.** Whenever item 1, part III, VA Form 10-7131, was completed by the Adjudication Division, the hospital will submit VA Form 10-7132 (in duplicate) within 24 hours following the veteran's departure on, or return from, Non-Bed Care of 30 days or more. Upon receipt of VA Form 10-7132, a copy will be forwarded by the Adjudication Division to the Veterans Services Officer having jurisdiction over the veteran's fiduciary, or if there is no fiduciary and the veteran has a spouse or child, to the Veterans Services Officer having jurisdiction over the area in which the hospital is located.

c. **Continuance of Awards.** Inasmuch as a veteran, for whom no guardian has been appointed is considered to be in the constructive custody of the chief officer of the institution while on Non-Bed Care, the institutional award on his/her behalf and special apportionments to his or her dependents are continued.

(1) The chief officer is authorized, when considered advisable, to provide a veteran, for whom no guardian or other fiduciary has been appointed, with funds upon departure on Non-Bed Care or may pay such funds to the person into whose custody the veteran is released.

(2) The application of this procedure to non-VA hospitals is contingent on arrangements being made by a Veterans Services Officer with officials of the non-VA hospital to conform to the same rules which bind Directors of VA hospitals.

d. **Adjustment for Absences of 30 Days or More.** Upon receipt of notice showing release to Non-Bed Care or authorized absence of 30 days or more, awards reduced because of hospitalization will be adjusted to pay the full amount on the basis of the last valid rating effective the date of departure (see par. 25.13c) and, subject to the prior approval of the Veterans Services Officer, when required, to discontinue any withholding for PFOP (see par. 28.12d).

(1) If however, the total amount is being paid either to the Director of a VA hospital or by special apportionment between the institution and dependents, no action is necessary except when the facts show that the special apportionment should be changed.

(2) In those cases in which funds in excess of the veteran's monthly entitlement are required and when entitlement has been terminated, funds may be provided from PFOP or FDIB accounts, in accordance with paragraph 28.09 c and d.

e. **Extension of Non-Bed Care.** The grant of an extension of the original period for Non-Bed Care status or authorized absence is on the same basis as an original grant and no further adjustment of a special apportionment or the institutional award will be made pending the expiration of the extension. Each case in which there is an extension will be carefully reviewed by the Director or chief officer of the institution to ascertain whether any special circumstances exist, with respect to safeguarding the interest of the veteran and his/her dependents or which may indicate continuance of the existing payments is indefensible. If the facts should warrant, appropriate recommendations will be submitted to the Adjudication Division as to any action or adjustment that may be considered advisable.

f. **Rating Action Required.** See paragraph 54.01e.

28.11 ACTION WHEN DISCHARGE FROM INSTITUTION IS PLANNED

a. **Prevention of Payment Interruption.** Upon discharge from an institution, institutional awards must be terminated effective date of last payment. (VAR 1501(J)) (But see par. 28.07f re transfer to nursing home.) Care must be exercised by all concerned to prevent interruption of payments when an incompetent veteran in receipt of an institutional award is finally discharged from the hospital. This requires the closest cooperation between the institution, the Veterans Services Officer and Adjudication Division.

b. **Hospital Report Showing Change in Competency Status.** When a hospital report is received indicating a medical opinion of regained competency, it will be referred to the rating board for consideration (see par. 54.01).

(1) Upon rating board determination of competency, any institutional award will be discontinued the date of last payment and thereafter benefits will be paid directly to the veteran.

(2) If a guardian has been appointed or the veteran has been adjudged incompetent by a court, direct payments may not be made until competency has been restored by the court unless the Veterans Services Officer certifies direct payment.

(3) A veteran who has not regained competency by VA rating will not be paid direct unless the Veterans Services Officer has certified the case as a supervised direct pay case (see par. 28.02b) or the court has adjudicated the veteran as competent. (VAR 1850(A))

(4) When payments are made directly to the veteran under supervised direct pay (VAR 5056) or based on regained competency, or to a fiduciary, the Veterans Services Officer will be notified if he/she has furnished VA Form 27-555. The hospital Director will also be notified when an institutional award is discontinued.

c. **Hospital Report Prior to Discharge.** Due to the indefinite period during which Non-bed Care Status may continue and the possibility that competency may be regained, appointment of a fiduciary should not be requested until a contemplated date of discharge has been decided upon. At that time the hospital will advise the Adjudication Division of an impending discharge and will furnish an interim summary, concurrently. Following submission of this report, the chief officer will retain the patient on Non-Bed Care status until the necessary rating and guardianship procedures have been concluded.

d. **Notification of Veterans Services Officer.** Upon receipt of the hospital summary referred to in the preceding paragraphs and rating of continued incompetency, the Veterans Services Officer will be informed of the rating and impending discharge and will be requested to effectuate the appointment of a fiduciary. Notification will be by VA Form 21-592, if not previously submitted. The Veterans Services Officer will then proceed with a field investigation to determine the need for appointment of a fiduciary and, contingent thereon, the type of fiduciary required.

(1) If the Veterans Services Officer concludes that the veteran is sufficiently competent to administer the funds payable, the facts supporting that opinion will be referred to Adjudication Division for further rating board consideration.

(2) The rating board, in the exercise of its authority to determine this issue, may consider the facts in the Veterans Services Officer's submission sufficient to support a finding of competency, may request further development, including an "at once" examination or period of examination and observation, or confirm the prior finding.

(3) The Veterans Services Officer and chief officer of the hospital will be fully informed of the action taken.

e. **Supervised Direct Pay–Appointment of Fiduciary.** In the event the rating board determines on reconsideration that the veteran remains incompetent, action will be taken to authorize supervised direct pay as provided in paragraph 28.02b(3) or as otherwise certified by the VSO. The Veterans Services Officer, the spouse or fiduciary, and the chief officer of the hospital concerned will be notified of the award.

28.12 DISCONTINUANCE OF INSTITUTIONAL AWARDS

a. **Upon Appointment of a Guardian.** The institutional award will be discontinued as of date of last payment by amended award to a guardian pursuant to VARs 1501(J) and 1852. Payment of all funds due to the incompetent person, including moneys on deposit in FDIB and/or PFOP, will be made to the fiduciary, if otherwise in order, as provided in paragraphs 28.09 c and d. (Also see par. 28.05 re notice to Insurance activity on VA Form 29-4347.)

b. **Upon Discharge From Hospital Treatment to Domiciliary Care.** Upon discharge from hospital treatment to domiciliary care of a veteran without guardian for whom an institutional award has been authorized, a competency statement will be included with hospital summary along with the notice of discharge.

(1) If there is a medical opinion that the veteran is competent to handle his/her own funds and rating of competency is made, action to have the institutional award discontinued and to award payment direct to the veteran will be taken.

(2) This may be accomplished by VA Form 20-6566 as a change of name of payee, unless award action is otherwise required, e.g., to terminate withholding for PFOP, restore full rate, etc. Referral to the Input activity will also be required for input of an 02M transaction to change the Competency Payment code to "1" (competent) unless this change is made in a required award action.

c. **Upon Determination of Competency To Handle Own Funds.** Upon a rating board determination of competency, in cases in which there is a court-appointed fiduciary, action to award benefits direct to the veteran may not be taken until the Veterans Services Officer has furnished certification to that effect. (See pars. 12.15 and 54.01 (F)

(1) The veteran will then be awarded the full amount of compensation, pension or retirement pay, effective date of last payment pursuant to VAR 1501(J). VA Form 20-6566 and TR 02M may be used as provided in the foregoing subparagraph. In addition, if rating input is not otherwise required an additional 02M transaction will be processed to change the rating competency code to "1" (competent).

(2) A control will be established for the expiration of the 6-month period following the finding of competency by the VA, or the removal of legal disability, whichever is the later. An award will then be prepared to restore payment of withheld amounts under VAR 1556, as provided in subparagraph d below.

(3) All moneys deposited in FDIB prior to August 8, 1946, will also be released, if otherwise in order, by a one-time payment award in accordance with paragraph 28.09c(2).

d. **Termination of PFOP Withholding.** An amended award will be required to discontinue a withholding for PFOP for release of accumulated funds or to provide for direct payment of current benefits, when in order under the provisions of paragraphs 28.09d, 28.10d and the foregoing subparagraphs a, b and c.

(1) An amended award will be prepared authorizing payments to the veteran, guardian, Director of a VA installation or, when required to provide funds as provided in paragraph 28.01d, to the chief officer of a non-VA institution.

(2) It will not be necessary to show any retroactive entitlement merely for record purposes, but only when a retroactive adjustment is required. The type 3 Withholding will be zeroed out, effective as of the date first effected when full release is in order or, from the date of last payment when only release of current benefits is in order.

(3) The payment competency code and, when full release is in order following a rating of competency, the rating competency code will also be changed to reflect the change in payment and competency status.

(4) For completion of "Prior Net Award Data," see paragraph 15.28b(2)(a).

SUBCHAPTER III. PROCEDURES RELATIVE TO $1,500 ESTATE LIMITATION

28.13 CONTROL PROCEDURE FOR PURPOSES OF $1,500 ESTATE LIMITATION

a. **Creation of Control.** Except as provided by VAR 1557 (when the estate is reduced to $500), any payments of pension, compensation or emergency officers' retirement pay made beyond the termination date, because of the $1,500 estate limitation specified in VAR 1501(1)(3), to or on account of a veteran rated incompetent by the VA, who is without spouse or child, and who is [institutionalized] by the United States or any political subdivision thereof are illegal (Op. Sol. 205-52) (38 U.S.C. 3203(b)(1)). For this reason, strict adherence to the development and control measures detailed herein is required.

(1) Whenever an award is subject to reduction under [VAR 5075(B) or] 1557, the adjudicator will compute a tentative date of discontinuance for control purposes only. This will be the first day of the month in which it is estimated that veteran's estate, from all sources will equal $1,500. (For example: Receipt in August of VA payment, estimated to cause the estate to equal $1,500, requires an August 1 tentative date of discontinuance.) For estimating purposes, the entire montly payment, irrespective of how being paid, plus any other known sources of income and assets, will be considered.

(2) A control for review of the case 60 days prior to the tentative date of discontinuance will be established under diary reason code 10 by appropriate entries on VA Form 21-6880 (or an award, if otherwise required).

NOTE: Although MSG Code 671, PFOP BALANCE APPROXIMATES $1,500, will issue on the basis of a PFOP balance equal to or exceeding $1,500, diary control remains necessary in any institutional award with payments to PFOP if the veteran has any estate in addition to PFOP funds.

(3) For determination of value of estate, see paragraphs 28.14 and 28.15.

(4) For questionable estates or those excessive on admission, see paragraph 28.16.

b. **Action Upon Expiration of Control Date.** The claims folder will be reviewed for evidence as to the current value of veteran's estate.

(1) When the veteran is [hospitalized] in a VA [medical center], an inquiry will be sent to the Director, Attn: Chief of Medical Administration, for asset information. (See par. 28.14.)

(2) When the veteran is in a non-VA hospital, receiving supervised direct payments or has a fiduciary, the Veterans Services Officer will be requested to supply the desired information.

(3) Upon receipt of this information, another computation will be made and action taken as provided in paragraph 28.16 if the estate equals or, in the near future will exceed $1,500; otherwise, payments will be allowed to continue with a new control.

28.14 EXCHANGE OF ASSET INFORMATION BETWEEN VA [MEDICAL CENTER] AND REGIONAL OFFICE

When VA Form 10-7131 is completed and returned by the Adjudication Division with item 8, part III checked (see par. 28.06b(3)), VA Form 10-7132, [ ] Status Change, will be received (in duplicate) with part V completed to furnish a breakdown of assets into gratuitous funds and all other funds on deposit at the institution. Other known assets will also be shown with an explanation as to whether the assets are confirmed or not; e.g., "Veteran has a bankbook showing $2,000 on deposit but last entry in bankbook is more than 3 years old." Finally, there will be repeated the amount of assets, if any, listed by the Adjudication Division on VA Form 10-7131.

a. **Action by Adjudication Division Upon Return of VA Form 10-7132 With Part V Completed.** Upon receipt of VA Form 10-7132 with part V completed, the adjudicator will determine if the control established under paragraph 28.13 is correct.

(1) If the control date is correct the original of VA Form 10-7132 will be filed in the claims folder, and a copy forwarded to the Veterans Service Officer having jurisdiction over the veteran's fiduciary.

(2) If the asset information as shown on part V, VA Form 10-7132, indicates the control date as established is premature, a new control date in accordance with the facts will be established.

(3) If the asset information on VA Form 10-7132 shows the estate is $1,500 or more, action will be taken to stop payments in accordance with paragraphs 28.13 and 28.16.

b. **Exchange of Data Re New Assets.** At any time that the Adjudication Division, Veterans Services Officer, the VA institution, clinic Director or Hines DPC becomes aware of additional assets belonging to the veteran, the element having the information will furnish it to the other elements. Exchange of information initiated by the Adjudication Division, will be made by completing part III of a supplemental VA Form 10-7131, and by the VA institution or clinic Director by completing part V of a supplemental VA Form 10-7132.

c. **Notice Furnished When Assets Approximate $1,500.** The VA [medical center], domiciliary, or clinic Director will immediately notify the Adjudication Division when the balance of funds on deposit in PFOP, together with other assets, approximates $1,500, provided that the Adjudication Division checked item 8, part III on VA Form 10-7131 and returned it to the originator. If this item is not checked, the VA institution will not furnish the Adjudication Division with asset information.

d. **Notice Furnished When Estate Is Reduced to $500 or Less.** Whenever item 8, part III of VA Form 10-7131 was checked by the Adjudication Division and the veteran's total assets are reduced to $500 or less following payment stoppage, a supplemental VA Form 10-7132 with part V completed will be submitted by the institution to the Adjudication Division indicating the month in which the estate was reduced.

28.15 DETERMINATION OF VALUE OF ESTATE FOR VA REGULATION 1557 PURPOSES

a. **Veterans Services Officer's Responsibility.** The Veterans Services Officer will determine and notify the Adjudication Division of the date when the estate of [an institutionalized] incompetent veteran without [spouse or dependent child] exceeds $1,500, in those cases in which:

(1) Veteran has a fiduciary or is receiving supervised direct payment, or

(2) Veteran is being maintained[, confined or committed] for treatment or care in an institution of the United States or political subdivision thereof, except a VA institution.

b. **Adjudication Division Responsibility.** Determination will be made in the Adjudication Division as to whether (and when) the estate of [an institutionalized] incompetent veteran without dependents equals or exceeds $1,500 in all other cases not included in subparagraph a above.

c. **Principles for Evaluation of Assets.** Value of assets from all sources must be considered. The following principles are for use in placing a monetary value for [VAR 5075 and] VAR 1557 purposes on such assets:

(1) **Real Estate.** The estimated net price the property will bring at forced sale after payment of all costs incidental to liquidation, including the cost of appointment of guardian when necessary. If real estate is encumbered or there is a co-owner, only the veteran's equity or proportionate interest should be used in determining the value of the estate.

(2) **United States Savings Bonds, War Bonds, Adjusted Service Bonds, and Other Appreciation Bonds.** The current value including accrued interest will be used.

(3) **Bonds and Stocks.** The current price listed on recognized stock exchange will be the value to be used.

(4) **FDIB and PFOP Accounts.** All sums on deposit in either a fund due incompetent beneficiaries or personal funds of patients are to be included.

(5) **Not Included as Assets.** The following will not be included as assets, although cash in an estate which was derived from any of them will be considered an asset of the estate:

(a) Adjusted service certificate.

(b) Insurance policy having cash surrender or loan value, and unapplied NSLI or USGLI dividends.

(c) Personal property that is exempt under State exemption statutes, such as furniture and household equipment, working tools, livestock and jewelry.

(d) Sums withheld by reason of hospitalization under VAR 1551 (Adm. Dec. 866). All cases encountered which were previously decided under the former decision, Adm. Dec. 815, will be accorded appropriate attention under Adm. Dec. 866 and VAR 1551, and amended awards executed if the facts justify that action.

28.16 ACTION WHEN VALUE OF ESTATE EQUALS OR EXCEEDS $1,500

a. **General.** When ~~it is established that~~ [ ] an incompetent veteran without spouse or child, [who is] hospitalized (other than for observation or examination) [or institutionalized (including penal institution)] ~~at the expense of the United States~~ or any political subdivision of the United States, [and the veteran's estate] equals or exceeds $1,500, [VAR's 5075(B) and] 1557 require discontinuance of payments of compensation, pension or emergency officers' retirement pay (including Officers Retirement Pay and Naval Pension) except for amounts authorized for parents' apportionment and for the veteran's care and maintenance. (See par. 28.17.)

(1) In all cases discontinuance will be effected by an amended award prepared and processed (under reason code 18) with a total withholding; i.e., "Monthly Payment" will be shown as "None" and the entire amount in "Total Award" will be repeated in "Withholding" as a type 1 Withholding.

(2) The date of discontinuance will be fixed in accordance with VAR 1501(I)(3) except as to situations described in subparagraph d below that are not specifically covered in VA regulations. (See also par. 25.09 re use of VA Form 21-653, par. 28.05 re use of VA Form 29-4347, and par. ~~29.31~~ 29.30 re notice required in cases of waiver or election of retired pay.)

b. **Estate Questionable or Excessive on Admission.** Payments may not be made legally when the estate of a veteran subject of VAR 1557 equals or exceeds $1,500 at the time of admission to the institution, except for apportionments and amounts for care and maintenance. (See par. 28.17.) If evidence of record conclusively establishes that fact, payments will be discontinued as of the date of admission.

(1) If the evidence is inconclusive, but there is some indication in the claims folder that an estate may equal or exceed $1,500, payments will be continued while development of the value of the estate is carried out.

(2) When the Veterans Services Officer has certified a fiduciary (or supervised direct payment) for an incompetent veteran, the Veterans Services Officer is responsible for development of the current value of the estate and of the date it equals or exceeds $1,500. Current estate information on which appropriate adjudicative action may be based will be obtained by request to the Veterans Services Officer.

(3) Upon completion of the development, subsequent award action will be contingent on the facts found.

(a) When the estate is shown to have equaled or exceeded $1,500 on admission, payments will be discontinued as of that date, irrespective of whether or not an overpayment results.

(b) If it is established that the estate is less than $1,500, payments will be continued, subject to reduction under VAR 1551 (see par. 25.14c) and control maintained as set forth in paragraph 28.13.

c. **Estate Reaches $1,500 During [Institutionalization].** When the estate of an incompetent veteran without spouse or child reaches $1,500 [while confined or committed to a hospital or other institution], payments will be discontinued pursuant to VAR 1501(I)(3) effective as of the first day of the month in which payment was actually received which causes the estate to equal or exceed $1,500.

d. **Action Upon Loss of Dependent.** When an incompetent veteran becomes subject to VAR 1557 due to the loss of a dependent spouse or child, payments will be continued subject to immediate development to determine the value of his/her estate.

(1) If it is established that the estate is less than $1,500, payments will be continued, subject to reduction under VAR 1551 (see par. 25.14c) and control maintained as set forth in paragraph 28.13.

(2) Once it is definitely ascertained that the value of the estate equals or exceeds $1,500, action will be taken to discontinue the payments for the veteran in accordance with the following, as the first day of nonentitlement:

NOTE: Reason codes and child data for [entry] will be as provided by paragraph 24.16 but using the effective dates provided below–End-of-year rule is NOT for application.

(a) **Death, Divorce or Marriage of Dependent.** Use the first day of the month in which such change in dependency occurred.

(b) **Maturity of Child.** Use the first day of the month in which a *sole dependent child* reaches age 18; or, if a school child, use the first day of the month in which a school course will be completed or in which the child reaches age 23, whichever is earlier.

(c) **Child's Unscheduled Discontinuance.** When the dependent is a child over age 18 who discontinues school attendance, use the first day of month in which the discontinuance occurred; provided, however, that if discontinuance is due to failure to commence or resume school attendance following a vacation period, the first day of the month in which the course was to be resumed or commenced, or date of last payment, whichever is the earlier will be used.

e. **Action When Dependent Is Only Child.** An appropriate control will be established to determine the value of the veteran's estate 60 days prior to the date dependency will cease because the child (including a child receiving DEA) reaches 18 years of age, or is scheduled to terminate schooling after age 18 or reaches age 23. Action will be taken as provided in paragraph 28.13b to develop the value of the estate.

f. **Veteran Entitled to Retired Pay.** When the veteran is entitled to retired pay from a service department, see paragraph ~~29.31~~ 29.30.

g. **Action Upon Release to Non-Bed Care of 30 Days or More and Return to Hospital.** Upon receipt of notice that any incompetent veteran whose payments have been discontinued because of the $1,500 limit has been placed on non-bed care, or authorized absence of 30 days or more, the full monthly rate will be awarded effective the date of departure from the hospital. Payments will again be discontinued effective the date of the veteran's return to the hospital, except when his/her estate has been reduced to $500 or less.

h. **Discharge From [Institution] and Readmission**

(1) When an incompetent veteran whose payments have been discontinued because of the $1,500 limit is being discharged, action will be taken in accordance with paragraphs 28.11 and 28.12 to determine the propriety of direct payment and whether a competency rating is in order.

(2) When such incompetent veteran is readmitted to a hospital following a discharge (as distinguished from Non-Bed Care) or authorized absence, the award will not be discontinued unless his/her estate equals or exceeds $1,500. (See subpar. b above.)

28.17 AWARDS FOR COST OF MAINTENANCE AND APPORTIONMENT TO DEPENDENT PARENTS

Payments required to be discontinued under [38 CFR 3.557] may be apportioned under [38 CFR 3.452(c)(2)] to a dependent parent(s) on determination of need by the Veterans Services Officer. In addition, if a veteran is institutionalized in a non-VA institution the Veterans Services Officer may recommend an award to the chief officer of so much of the balance, if any, of the discontinued amount as is necessary for the cost of maintenance. In Section 306 or Improved Pension cases, when the institutionalization is at VA expense, the total so awarded may not exceed the $60 rate payable after 3 full months of treatment or care. (38 U.S.C. 3203(b)(2))

a. Referral to Veterans Services Officer

(1) When an apportionment of an institutional award has been made to a dependent parent, in accordance with paragraph 28.08b(4), no immediate change will be made in the parent's award. Any payment for the benefit of the veteran to the chief officer of an institution, to a fiduciary and to PFOP will be discontinued as provided in paragraph 28.16a. [The Adjudication Division will develop] evidence of the parent's current dependency and need status. [Furnish] the Veterans Services Officer [ ] all information obtained and [request a recommendation regarding] the proper amount payable to the parent(s) under [38 CFR 3.452(c)(2).]

(2) If there is a parent not in receipt of an apportionment, [discontinue] the veteran's payments [ ] as provided and [advise] the parent(s) [ ] of the right to file claim for apportionment. If current evidence of relationship and dependency, including assets and income, is not of record, the initial letter should advise what is necessary to establish these elements of entitlement. Upon receipt of claim the Adjudication Division will, as far as necessary and possible, develop all evidence regarding dependency and the needs of dependents by correspondence, prior to referral to the Veterans Services Officer as stated in the preceding subparagraph (1).

b. Action by Veterans Services Officer. The Veterans Services Officer will consider the evidence submitted and if necessary schedule a field examination to complete the evidence. A recommendation for the amount of apportionment for each parent will then be made based upon the parent's need, as established. The Veterans Services Officer will also advise the amount payable to the institution for cost of maintenance from any amount remaining after apportionment to parent(s). (See also par. 28.09 c and d.)

c. Award for Care and Maintenance. When the veteran is maintained in a non-VA institution and the Veterans Services Officer recommends an institutional award for cost of care and maintenance, [amend] the veteran's award [ ] as provided (par. 28.16a), except that:

(1) Special law code 12 will be shown.

(2) The payee name and address will be shown as "(Title of Officer and Name of Institution) for C/M of (Name of Veteran, Address of Institution)."

(3) The difference, if any, between the total amount payable to the veteran but for the provisions of [38 CFR 3.557] and the monthly rate awarded the institution as determined by the VSO, will be shown as a type 1 Withholding.

d. Apportioned Award to Parent(s). The award to the parent(s) will be prepared and processed in the same manner as any other apportionee award. (See pars. [15.34b(1)] and 26.02.)

(1) When an apportioned award is authorized, [enter] special law code 12 [ ] in the primary award to reflect the apportionment.

(2) The additional amount awarded on account of the dependent parent(s) will be covered by the type 1 Withholding on the primary award and identified by an appropriate explanation [as] "remarks" (par. 15.34b(1)(b)).

e. Notification to Claimants

(1) Adjudication Division will be responsible for notification of awards for cost of maintenance, apportionments to dependent parents based upon recommendations of the Veterans Services Officer and of disallowance to parents because dependency is not shown and/or relationship to the veteran is not established.

(2) The Veterans Services Officer will be responsible for notification to the veteran's fiduciary when the VSO determines that no award from appropriated funds should be made for cost of maintenance in non-VA institution, and to a dependent parent when determining that the parent is not in need or that the parents' needs should be met solely from the veteran's estate or PFOP. (See par. 18.23c for certification of appeals.)

28.18 RESUMPTION—INCOMPETENTS $1,500 ESTATE CASES

a. Upon Reduction of Assets to $500 or Less. Pursuant to [38 CFR 3.558(a),] upon receipt of notice that the veteran's estate has been reduced to $500 or less, [take] immediate action [ ] to authorize payments on his/her behalf at the rate then payable, effective not earlier than the first day of the month in which the estate was reduced to $500 or less. Appropriate action will be taken, if required, to simultaneously adjust or terminate apportionment to parents. [Give] notice of the action taken [ ] to the institution in accordance with paragraph 25.09.

b. Upon Discharge, Rating of Competency, or Establishing Existence of Spouse or Child. Prior to reduction of estate to $500 or less, [resume] payments [ ] upon discharge or release from institutionalization, rating of restored competency or establishment of a spouse or dependent child. (See also par. 28.07f re transfer for nursing home care.) In such event, [authorize] payments at the rate then payable [ ] as follows:

(1) From the date of regular irregular discharge or release from the institution.

(2) From the first of the month in which the veteran is rated competent.

(3) From the first of the month in which it is determined that the veteran has a spouse or dependent child.

NOTE: Payments may also be resumed upon authorized absence of 30 days or more.

c. Estates Involving Chose-in-Action. Resumption of payments will be authorized, if otherwise in order, effective the first day of the month in which award action is taken, upon receipt of certification by the Veterans Services Officer that the value of the estate involving a claim or chose-in-action does not exceed $500, in accordance with the provisions of [38 CFR 3.559.] Upon termination of litigation or settlement of claim, the Veterans Services Officer will again review the case and, if the estate is found to exceed $1,500, will furnish appropriate certification for action by the Adjudication Division. In any case in which payments may not be made under these provisions, and there is no income available to provide for clothing and other needs and comforts for the veteran, the facts in the case will be reported to Central Office (212).

28.19 PAYMENT OF LUMP SUM—[38 CFR 3.558(c)]

a. Control Procedure. Pursuant to the provisions of [38 CFR 3.558(c),] upon a rating of competency by the VA ~~or removal of legal disability, and/or release from hospitalization~~, a 6-month control will be required ~~from the later of such occurrences~~ for the release of any amounts due and not paid because of the provisions of [38 CFR 3.557.] For this purpose, "finding of competency" will be the effective date of the rating of "competent" by the VA ~~or the date of the order of a court of jurisdiction restoring competency, whichever is the later.~~

NOTE: [Section 3.1007 of title 38, Code of Federal Regulations] expressly prohibits payment of such lump sums as accrued on the death of the veteran. (Also see par. 37.16.)

[b. Postcompetency Field Examination. Four months from the beginning of the control period, request a field examination to obtain evidence of the veteran's ability to handle the funds which will be available. The request shall include the approximate amount of withheld funds which will become available at the end of the 6-month period. The examination

report will provide an affirmative basis for a conclusion of continued competency or provide a basis for reconsideration by the rating board. The Adjudication Division will maintain control for receipt and rating board review of the field examination prior to award action.]

[c.] **Award Action.** The lump-sum adjustment will be effected, at the expiration of the control period, by supplemental award action provided the veteran has been released from hospitalization and continues to be rated competent. The award will be made payable to the competent veteran and will provide for payment at the total award rate(s) which he/she would have been paid for all periods from the effective date of discontinuance of payments under [38 CFR 3.557.] Amounts authorized for any and all periods subsequent to such date as an apportionment to a dependent parent will be accounted for as a type 1 Withholding. Prior net award data will show [zeros], from such effective date, except for payments authorized for care and maintenance.

[d.] **Incompetent Prior to Award Action.** When, prior to award action under [38 CFR 3.558(c),] a veteran has again been rated incompetent by the VA and is hospitalized by the United States or any political subdivision, award action releasing amounts withheld under [38 CFR 3.557] will be taken only if the following conditions are met:

(1) The current rating decision confirms the prior rating of competency; and

(2) The rating of competency or removal of legal disability (whichever was later) had continued for 6 months; and

(3) The veteran now has a proper dependent:

(a) For purposes of [38 CFR 3.557(a),] a proper dependent is a spouse, child or dependent parent.

(b) For purposes of [38 CFR 3.557(b),] a proper dependent is a spouse or child.

28.20 CARE AND MAINTENANCE AWARD AFTER VETERAN'S DEATH

a. **General.** When an award has been made to an institution for the care and maintenance of an incompetent veteran under U.S.C. 3203(b)(2) and the veteran dies, the institution may be awarded the amount due and not paid through the month preceding the month in which the death of the veteran occurred. This does not constitute payment of prohibited accrued benefits, but only payment of an approved amount due, but unpaid, to the institution. However, when there has been no recommendation by the Veterans Services Officer or approval of a "care and maintenance" award *prior* to the death of an incompetent veteran, an award cannot be paid for any period.

b. **Award Action.** An award to an institution for the amount of care and maintenance due and unpaid at the time of the veteran's death will be prepared as a one-time payment award for processing by the Finance Operations activity as an "outside the system" payment. [ ]

CHAPTER 29. ELECTIONS, WAIVERS AND RECOUPMENTS

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CHAPTER 29. ELECTIONS, WAIVERS AND RECOUPMENTS

SUBCHAPTER 1. GENERAL

29.01 RESTRICTIONS ON CONCURRENT PAYMENTS

a. **General.** The service departments and other Federal agencies, under laws administered by them, also grant monetary benefits to veterans or their dependents because of disability, death or length of service. These laws usually contain specific limitations or prohibitions designed to prevent similar concurrent payments by the VA. As a rule, these laws provide for elections, waivers or administrative recoupments so that the claimant may choose between the available benefits.

b. **VA Restrictions.** When it is found that a claimant is entitled to monetary benefits under more than one provision of the law or regulation, the prohibition against duplication of benefits contained in [38 CFR 3.700] series *must* be observed. Generally, a claimant so entitled has the right to elect which benefit to receive [38 CFR 3.701]. Whenever such a choice exists, the claimant is to be fully informed regarding entitlement to the respective benefits.

29.02 AVOIDANCE OF OVERPAYMENTS

a. **General.** In order to avoid overpayments resulting from concurrent payments of disability compensation or Section 306 or Old Law pension and retirement pay, readjustment pay, or disability severance pay, it is a prerequisite to the adjudication of all claims that the veteran's application and the claims folder be carefully reviewed in accordance with paragraphs 21.10 and 21.11 to determine whether any retirement, retainer, disability severance or readjustment pay has been awarded.

NOTE: The award of naval pension will be made by the VA only upon certification by the Navy Department and an examination of the claims folder will reveal if this certificate is of record (par. 24.11). (See [38 CFR 3.803].)

b. **Official Notice.** Official notice on separation documents of retirement constitutes a warning to Adjudication personnel that duplicate payments of compensation and retirement pay may result from premature award action without clearance from the service department.

29.03 ELECTIONS—GENERAL

a. **Election Defined.** An election is the exercise of a choice of one benefit or type of benefit over another, to the total exclusion of the benefit not chosen.

(1) A claimant has the right to elect any benefit, regardless of whether the greater or lesser benefit is taken and even though the election results in reducing the benefit payable to his or her dependents.

(2) An election may be either final and irrevocable or a claimant may be permitted to elect and reelect as often as desired, depending on what the pertinent legislation authorizes.

(3) Elections are generally divided into two categories: initial elections and reelections.

b. **Initial Election.** An initial election is the first election made by a claimant after being informed that there is a choice between two or more different benefits. If the claim is timely filed and the election is *timely* received, its effect is retroactive to the date entitlement is otherwise shown.

c. **Reelection.** When permissible, subsequent changes from one benefit to another, except as delineated in paragraph 29.04, may *not* be made in the absence of an application, formal or informal, constituting a reelection. Accordingly, if a former lesser benefit becomes the greater benefit, the claimant will be fully informed of all rights and prerogatives. Upon this reelection, the new greater benefit will not be awarded for any period prior to the date of receipt of reelection.

29.04 ASSUMPTION OF ELECTION

a. **Between Disability Compensation and Pension.** As between disability compensation and pension, the greater benefit will be awarded at any time, in routine cases, without necessity of formal election or reelection. In the absence of information to the contrary, it will be assumed that the claimant elects the greater benefit.

b. **Between Other Benefits.** This assumption of election does not apply when the choice is between compensation or pension and any other type of benefit or between Improved Pension under Public Law 95-588 and pension under laws in effect prior to December 31, 1978, except as provided in paragraph 29.08b for service pension. (See par. 15.30c re preparation of awards involving more than one entitlement code; par. 15.14 re award of lesser benefit pending determination of entitlement to greater benefit; subch. IV, this chapter, re restriction on election of Federal Employees' Compensation; par. 37.05b re accrued payable on elections pending at death; and ch. 42, subchs. II and III, re restrictions on elections between DIC and death compensation and Federal Employees' Compensation.)

29.05 FORM OF ELECTION

a. **General.** Any statement indicating an intent to apply for a particular benefit signed by the claimant or his or her fiduciary, either on a formal claim or in correspondence, may be accepted as an election.

b. **Election on Behalf of Claimant.** An election on the claimant's behalf either by a holder of a power of attorney or a Member of Congress ([38 CFR 3.155(a)]) will be accepted as an *informal* election if supported by a statement (which will be requested) signed by the claimant or fiduciary. The usual 1-year requirement for compliance with the request for an election will prevail for the determination of the earliest [ ] date of entitlement to the elected benefit.

c. **Claim for VA Benefits Constitutes Waiver of Retired Pay.** In the absence of a statement to the contrary, an application for compensation constitutes an election to receive VA benefits in lieu of retired pay or a waiver of retired pay to secure compensation ([38 CFR 3.750(c)]).

[d. **Conditional Election.** Consider a claim for additional pension received after January 1, 1979, from a payee in receipt of protected pension (Old Law or Section 306) as a conditional election of Improved Pension predicated on a determination of entitlement to greater benefits. If the payee confirms the election to receive Improved Pension within 1 year from the date of notice of the increased rate, the payee is entitled to Improved Pension from the date of receipt of the conditional election pursuant to 38 CFR 3.31(a).

EXAMPLE: A veteran in receipt of Section 306 pension files a claim for Aid and Attendance on March 7, 1986. Rating of April 2, 1986, establishes entitlement to Aid and Attendance from March 7, 1986. Notify the veteran of the rate payable under Improved Pension and the conditions of payment. Maintain the pending issue file established for the Aid and Attendance claim for 60 days under the provisions of M21-1, paragraph 7.01b. The veteran confirms the election on August 7, 1986. The date of entitlement to Improved Pension, including the special monthly pension for Aid and Attendance, is March 7, 1986, with payment effective April 1, 1986.]

29.06 APPOINTMENT OF FIDUCIARY TO EXERCISE RIGHT OF ELECTION

a. An election of one benefit to the exclusion of another may be made by a fiduciary appointed by a court, or in the absence of such, one designated by the Veterans Services Officer, including a spouse recognized under [38 CFR 13.57] or chief officer of a non-VA institution. An election should not be solicited when the veteran is incompetent when it would not be to his or her advantage. (But see par. 29.25 re waiver of retired pay.)

b. Prior to a determination as to whether an election made by the fiduciary of an incompetent is to be accepted the case is to be referred to the Fiduciary and Field Examination activity for their review and comment as to whether an election is advantageous. However, any decision pertaining to an election must still take into account the requirements of other benefit programs, such as [Supplemental Social Security,] which may require an election of a VA benefit which pays a larger dollar amount.

29.07 WAIVER

A waiver is the relinquishment of all or a portion of a benefit in order to qualify for another benefit. Veterans will frequently waive only so much of their retired pay as is equal to the amount of compensation or Section 306 or Old Law pension to which they are entitled. Since compensation and Section 306 or Old Law pension are not taxable but retired pay from the Armed Forces based on age or length of service is, an obvious advantage accrues. (See subch. V, this chapter, re retired pay cases.)

SUBCHAPTER II. ELECTIONS BETWEEN PENSION PROGRAMS

29.08 GENERAL PROVISIONS

a. **Old Law or Section 306 Pension and Improved Pension.** Those persons who were receiving or entitled to receive pension on December 31, 1978, under laws then in effect have a right to continue such pension, if otherwise entitled, or to elect to receive pension under Public Law 95-588 (Improved Pension). [38 CFR 3.711 and 3.960]

(1) **Entitlement to Section 306 or Old Law Pension on December 31, 1978.** If entitlement existed on December 31, 1978, even though payments were not in effect due to a pending claim not being finally adjudicated (such as deferment for determination of income), if it is later found that there was entitlement on that date or appointment of a fiduciary, etc., the claimant has a right to the Section 306 or Old Law pension or to election of Improved Pension.

(2) **Veteran Found Not PT.** This right of continued entitlement to Section 306 or Old Law pension is not protected when a veteran in receipt of pension on December 31, 1978, is found to be not permanently and totally disabled after that date, but subsequently is again found entitled. The right is also not protected when income becomes a bar after December 31, 1978, unless entitlement is later reestablished from the date of termination.

(3) **Not Entitled to Section 306 or Old Law Pension on December 31, 1978.** When a claimant whose pension was discontinued for any reason prior to December 31, 1978, and who was not entitled to pension on December 31, 1978, but who becomes entitled after that date, will be awarded pension under the Improved Pension law only.

(4) **No Proportionate Income Computation.** There will be no proportionate income computation when a claimant receiving pension under the prior law elects Improved Pension.

(5) **Projected Old Law Pension Exceeds Improved Pension.** When a veteran receiving pension under the Old Law at a monthly rate of $66.15 elects pension under the Improved law but the projected Improved law monthly rate would be less than the veterans eventual monthly entitlement of $78.75 under the Old Law, award action paying Improved Pension will be deferred until a signed statement affirming the election of Improved Pension is received.

(6) **Aid and Attendance/Housebound.** Generally, refer aid and attendance and housebound claims filed by Section 306 and Old Law pensioners to the rating board. If election of Improved Pension is not in the claimant's financial interest, even with aid and attendance benefits, do not refer the claim to the rating board. Also do not refer the claim to the rating board if the claimant did not submit current medical evidence.

(a) If election of Improved Pension plus aid and attendance is not in the claimant's financial interest, disallow the claim.

(b) If the claimant did not submit current medical evidence, inform the claimant that we need current medical evidence showing probable entitlement to aid and attendance or housebound benefits. Explain the need to elect Improved Pension in order to receive additional benefits. Invite the claimant to elect Improved Pension. Develop for any other evidence necessary to adjudicate the claim. Continue the control previously established. (See par. 7.01b.)

(c) If the rating board directs development for medical evidence, concurrently write to the claimant and explain the need to elect Improved Pension in order to receive additional benefits. Invite the claimant to elect Improved Pension. Develop for any other evidence necessary to adjudicate the claim. Continue the control previously established. (See par. 7.01b.)

(d) If the rating board determines the claimant is in need of aid and attendance, inform the claimant of the decision. Explain to the claimant that no additional benefits are payable unless Improved Pension is elected. Notify the claimant of the right to elect Improved Pension. Concurrently develop for all other information needed to adjudicate the claim. Continue the control previously established. (See par. 7.01b.)

(e) If the rating board determines that the claimant is in need of housebound benefits, follow the procedures in subparagraph (a) above, if election of Improved Pension is not in the claimant's financial interest. Follow the procedures in subparagraph (d) above in all other cases.

(f) If the rating board determines that the claimant is not in need of aid and attendance or housebound benefits, disallow the claim. Notify the claimant of the decision and provide procedural and appellate rights.

b. Spanish-American War and Improved Pension

(1) **Entitled To Elect Improved Pension.** Spanish-American War veterans entitled to service pension under 38 U.S.C. 512 may elect payments at the rates provided for Improved Pension under the conditions (other than service requirements) prescribed therein, regardless of when entitlement arose. (38 CFR 3.712 and 3.960)

(2) **Aid and Attendance.** Spanish-American War veterans entitled to additional pension for aid and attendance will be paid whichever is the greater benefit—service pension under 38 U.S.C. 512 or Section 306 law pension if Improved Pension has not been elected. No election between programs will be required and unlimited changes may be made to pay the

greater rate. Appropriate adjustments will be made at any time routine handling of the claims folder reveals a greater ra is payable. The adjustments will be effective the first day of the month in which the change is warranted (38 CFR 3.712a(2)). If Improved Pension benefits are elected this election is irrevocable and the veteran may no longer receive any benefit other than Improved Pension.

(a) **Development of Income.** Before Improved Pension rates may be paid, it will be necessary to develop income, net worth and dependency status. If Improved pension rates are awarded, annual income questionnaires will be required and awards will be subject to termination for failure to return annual income questionnaires.

(b) **Reduction of Pension Due to Hospitalization.** When reduction due to hospitalization is required, and Improved Pension has not been elected, payment will be made under whichever program, service pension or Section 306 pension, will provide the greater rate at all times during the period of hospitalization.

(3) **WRO Jurisdiction.** The Washington regional office has jurisdiction for all authorization actions involving Spanish-American War Veterans (par. 2.02a(1)).

(4) **Award Preparation.** When one VA benefit has been elected over another, an award will be prepared in accordance with procedures set forth in chapter 15 with particular emphasis on the following:

(a) **Reason Code.** Reason code 30 (Election) will be used on the first award line to reflect the election or change of VA benefits.

(b) **Entitlement Code.** The appropriate entitlement code will be used consistent with the active duty dates and type of benefit payable. (See app. C, table A.)

29.09 EXERCISE OF RIGHT OF ELECTION

a. **Action Upon Receipt.** An election by the veteran or on the veteran's behalf (par. 29.05) is binding on his or h dependents, including an estranged spouse or children not in his or her custody. When an election is received, award action will be deferred if the monthly rate of pension under the Improved Pension law would be less than the current monthly rate under the prior law or may not otherwise be to the veteran's financial interest. In addition, Public Law 96-272 requires that no election or reelection of Improved Pension may be accepted from persons residing in States in which medicaid eligibility is contingent upon receipt of AFDC (Aid to Families With Dependent Children) or SSI (Supplemental Security Income) unless the claimant has first been informed that the election may result in loss of medical assistance (medicaid) and that he or she is not required to make the election in order to receive AFDC or SSI benefits. For purposes of SSI, the following States are affected:

Alabama	Nevada
Alaska	New Jersey
Colorado	New Mexico
Delaware	Oregon
Florida	South Carolina
Georgia	South Dakota
Idaho	Texas
Iowa	Wyoming

For AFDC purposes, the law also applies to the States of Indiana, Mississippi, Missouri and Ohio.

b. **Notice to Claimant**

(1) **Election Not in Claimant's Interest.** When election of Improved Pension may not be in the claimant's financial interest, the claimant will be informed by dictated letter of the exact monthly rates payable under each law for the periods indicated, and that, because of the possible adverse result, further action on the election will not be taken unless he or she furnishes a signed statement expressing a desire to receive the possible lesser benefit. The claimant will also be informe when appropriate, that the election may be deferred, and of the effective date of a later beneficial election. No control on whether an election is made will be maintained.

(2) **Election by Persons in Specified States.** Upon receipt of an election by a person in any of the States indicated above and determination that greater benefits would be payable, the claimant will be advised as provided in figure 29-1. No award action will be taken unless the claimant responds in writing to that letter. No control will be maintained.

(3) **Election Accepted by VA.** When the election would be to the claimant's advantage or response is received indicating a desire to proceed with an election not considered in the claimant's interest or under the special provisions of Public Law 96-272, the election will be processed. Notification of the action taken will ordinarily be provided by a Target-generated award letter unless a dictated letter is otherwise deemed appropriate.

29.10 FINALITY OF ELECTION

An election of Improved Pension must be a *positive* act of the claimant or fiduciary designated by a Veterans Services Officer, including a spouse-payee under 38 CFR 3.850(a) and 13.57, a parent-custodian recognized under 38 CFR 3.850(c) or by the Director of a VA medical center when no fiduciary has been appointed for the incompetent patient. However, the fact that an election may have been prompted by requirements of SSI or AFDC that a person applying for or receiving SSI or AFDC also apply for Improved Pension as a greater benefit will not be considered a basis for revocation of an otherwise valid election. This is the case as to persons not included under the provisions of Public Law 96-272 because of residence in States other than those specified in paragraph 29.09a or any institutionalized persons receiving medicaid assistance (although not in receipt of SSI or AFDC) without regard to State of residence. An election is final and irrevocable after a pension check received thereunder is negotiated, except that an election is voidable by the claimant when:

a. **Claimant Incompetent:** The election was made by a claimant subsequently found to have been mentally incompetent at the time the election was made.

b. **New Rate Less.** The amount awarded pursuant to the election was at a higher rate than was justified by the evidence then of record in the claims folder, if it is subsequently found on the basis of the *same* evidence that there was entitlement to a lower rate.

c. **Right of Election Provisions Not Followed.** The provisions of paragraph 29.09, regarding deferral of action and fully informing claimant of the effects of the election, were not followed.

d. **Election Based on Erroneous Information.** It is shown that the election was based on erroneous information furnished by the VA.

e. **DD/EFT (Direct Deposit-Electronic Funds Transfer).** If revocation of election is received prior to the second payment being made at the Improved Pension rate.

SUBCHAPTER III. EMERGENCY OFFICERS' RETIREMENT CLAIMS

29.11 JURISDICTION

a. **General.** Jurisdiction of claims for EOR (Emergency Officers' Retirement) pay under Public Law 70-506 and ORP (Reserve Officers' Retirement Pay) under Public Law 77-262 is delegated to WRO (Washington Regional Office), Washington, D.C. 20421, for all authorization actions including disallowance of claims (par. 2.02a(14) and (15).

NOTE 1: ORP payable under Public Law 18, 76th Congress, which was formerly paid by WRO, has been paid by the military since July 1, 1950. When this jurisdictional change occurred, it was done without documenting the claims folder to show that VA payment of this benefit had been terminated. Claims received from such veterans will be handled in the office of normal jurisdiction as a reopened claim from an individual who may be in receipt of military retired pay. The only ORP paid by the VA since July 1, 1950 is for those few remaining officers retired by the Army under Public Law 262, 77th Congress.

NOTE 2: Public Law 87-875 (October 24, 1962) reopened the EOR program. Only retired emergency officers of World War I had basic eligibility to this retirement pay in lieu of VA compensation from the date of application when filed within the 6-month period after October 24, 1962, provided:

a. The EOR pay would have been granted if application had been filed before May 25, 1929.

b. The EOR pay would have continued to be payable under subsequent legislative changes.

c. The monthly rate of EOR pay at any time between May 24, 1928, and May 24, 1929, inclusive would have been lower than the monthly rate of disability compensation payable to the retired emergency officer.

NOTE 3: Only reserve officers called or ordered into active service for extended duty in excess of 30 days on or subsequent to February 28, 1925, and prior to April 3, 1939, and who suffered disability from disease or injury in line of duty during such service, were eligible for reserve officers' retirement pay.

b. **Eligibility Determinations by Central Office.** Any notice of disagreement on or claim for EOR pay wherein basic entitlement is questioned for any reason or claimed by virtue of new legislation will be forwarded by WRO to Central Office (212A) with the claims folder for necessary determination. In case of an NOD, preparation of the statement of case and subsequent processing will be accomplished by Central Office in accordance with chapter 18.

c. **Referral to WRO.** Upon determination by Central Office, the case will be referred to WRO for preparation of the indicated rating decision and necessary authorization action.

29.12 RATING DECISIONS

a. **General.** A formal rating decision (original only) will be prepared on VA Form 21-6796, Rating Decision, in accordance with paragraph 49.05b for initial ratings.

b. **Narrative Statement of Facts.** Under "Facts" the ratings will show, in addition to other pertinent data, the following:

(1) The amount of monthly compensation the veteran was receiving or would have been entitled to receive between May 24, 1928, and May 24, 1929;

(2) The amount of retirement payable between May 24, 1928, and May 27, 1929;

(3) The percentage of service-connected disabilities as of May 24, 1929, on the basis of the 1925 rating schedule; and

(4) The designation of which service-connected disabilities were directly incurred in or aggravated by active service without benefit of statutory or regulatory presumption (VAR 1754).

c. **Conclusion.** The conclusion will show all rating diagnostic and applicable SMC codes as well as the percentage of disability and diagnosis. In addition, one of the following statements will be shown after the last rating code:

"EOR Entitled 38 U.S.C. 11 from (date)"; or

"EOR Not Entitled 38 U.S.C. 11."

29.13 APPORTIONMENTS

Apportionments will be authorized in accordance with VAR's 1450, 1451, 1453 and 1458. (See ch. 26.)

29.14 NOTICE TO CLAIMANTS

a. **General.** Only dictated letters will be sent to claimants fully informing them that their claim for EOR pay was granted or denied including notice of their right of appeal. (See also par. 29.16 re right of election and reelection between EOR and disability compensation.)

b. **Entitlement Found.** If a rating shows the veteran would elect to receive EOR pay, the letter of notification will include the statement "You can elect to receive emergency officers' retirement pay of $ _____ or you can continue receiving $ _____ monthly compensation. Regardless of whether you elect emergency officers' pay, you now have the status of 'Retired Emergency Officer' and, as such, are entitled to all rights, privileges and benefits of retired emergency officers of World War I."

c. **Controls.** No control of whether the veteran elects EOR pay will be maintained.

29.15 PREPARATION OF AWARDS

All original, reopened or amended awards will be prepared [ ] in accordance with procedures in chapters 15 and 23.

a. **Monthly Rates.** The monthly rates, as found in appendix B, section XIII, are based on the veteran's service grade, years in service and, on reopened or amended awards, dependent upon whether EOR pay was *recomputed* under Public Law 351, 81st Congress.

(1) If EOR pay was not recomputed, then the monthly rate will be as found in table I.

(2) If EOR was recomputed, then the monthly rate will be as found in table II.

b. **Entitlement Codes**

(1) Entitlement code 05 is applicable in those cases in which the veteran did not have his/her EOR pay recomputed.

(2) Entitlement code OE is applicable in those cases in which the veteran did have his/her EOR pay recomputed.

c. **Miscellaneous Code.** The pay grade code in the 20 or 30 series corresponding to the veteran's rank and cumulative service, as listed in table I or II of the rate chart, will be entered.

29.16 ELECTION BETWEEN VA COMPENSATION AND EOR

a. **General.** A veteran has the right to elect or reelect VA compensation or EOR pay without penalty.

b. **Review.** On routine review of the claims folder or on request by the veteran, guardian or duly authorized representative, it is discovered that VA compensation is now the greater benefit, the claimant will promptly be informed among other things that "You can elect to receive VA compensation of $ _____ or you can continue receiving EOR pay of $ _____."

c. **Control.** No control whether the claimants elects the greater benefits will be maintained.

d. **Award Preparation.** The award will be prepared (par. 29.15) subject to the following:

(1) **Reason Code.** The reason code will be 30 (change of VA benefits).

(2) **Entitlement Code.** The entitlement code will be consistent with the active duty dates and type of benefit payable as found in appendix B.

(3) **Miscellaneous Code.** When changing between EOR and disability compensation, the code in the 20 or 30 series for EOR pay will either be zeroed out or the otherwise applicable code inserted.

NOTE: See paragraph 31.05d re notice of death to be furnished applicable service department.

SUBCHAPTER IV. FEDERAL EMPLOYEES' COMPENSATION ACT

29.17 GENERAL INFORMATION

This subchapter applies when benefits are payable by the Office of Workers' Compensation Programs (referred to hereinafter as OWCP) because of disability due to civilian employment as well as when FECA (Federal Employee Compensation Act) benefits are based on military service. Regulatory information is contained in VAR 1708. Specific provisions applicable to death cases are covered in chapter 42, subchapter III.

29.18 RESTRICTIONS ON CONCURRENT PAYMENTS

a. **Compensation.** Concurrent payments of VA disability compensation (or dependency and indemnity compensation) and FECA are prohibited when based on service connection (including when under 38 U.S.C. 351) for the same disability (or death) due to:

(1) Military service prior to January 1, 1957; or

(2) Civilian employment on or after September 13, 1960.

NOTE 1: FECA benefits are not payable for disability or death incurred on or after January 1, 1957, based on military service.

NOTE 2: Persons receiving payments of FECA based on civilian employment concurrently with VA benefits based on awards approved prior to September 13, 1960, may continue to receive both benefits so long as entitlement exists (VAR 1958).

b. **VA Pension**

(1) **Military Service.** Concurrent payments of VA pension (death or disability) and FECA are prohibited based on service prior to January 1, 1957. (Also see NOTE 1 above.)

(2) **Civilian Employment**

(a) The prohibition against concurrent payments of pension and FECA, based on civilian employment, was removed effective April 7, 1970 (VAR 1708(B)).

(b) The provisions of VAR 1114(A) are for application in determining the effective date a pension award concurrently with FECA when authorized solely by reason of the liberalizing VA regulation, at the request of the claimant or his [or her] authorized representative, or when the case is routinely encountered.

EXHIBIT

Basis for FECA Entitlement	Disability or Death Compensation (or DIC)	Disability or Death Pension
Disability or death due to military service:	**Prior to 1-1-57** Bar to concurrent payment—Election required On or after 1-1-57, FECA not payable based on military service - No concurrent entitlement.	
Civilian employment award action taken:	**Prior to 9-13-60** No bar—Election not required	**Prior to 4-7-70** Bar to concurrent payment—Election required
	On or After 9-13-60 Bar to concurrent payment—Election required	**On or After 4-7-70** No bar—Election not required

c. **Veterans' Educational Benefits Under 38 U.S.C. Chs. 31 and 34.** There is no bar to concurrent payment of FECA and subsistence allowance for vocational rehabilitation under 38 U.S.C. ch. 31 or educational assistance under 38 U.S.C. ch. 34.

d. **Dependents' Educational Assistance.** A spouse, son or daughter has independent entitlement to educational assistance under 38 U.S.C. ch. 35. Accordingly, DEA may be paid without regard to the fact that the veteran is receiving FECA benefits.

NOTE: There is no bar to concurrent payment of FECA and any benefits by the VA when such benefits are not based on the same disability or death VAR 1708(B)(2).

29.19 PROCESSING OF CLAIMS

a. **General.** Applications for compensation will be carefully examined to determine whether the claimant has applied for or is receiving benefits from the OWCP.

b. **Benefits Payable.** VA benefits determined to be payable will be awarded without regard to possible entitlement to benefits from the OWCP unless there is in file:

(1) A copy of the claimant's election to receive FECA benefits; or

(2) Notice (either from, the OWCP or from the claimant or the claimant's representative) that a claim has been filed with the OWCP.

c. **OWCP Request for Payment of VA Benefits.** VA benefits will also be awarded in any case when the OWCP requests that the VA proceed with the adjudication of the claim. Such requests may be received in a limited number of cases when a considerable delay in adjudicating is anticipated by the OWCP.

29.20 ELECTIONS

[a. **When Required**

(1) An election between FECA benefits and VA benefits is required for any period in which there is a restriction on concurrent payment of both benefits for the same disability. The term "same disability" has been construed as meaning disability resulting from the same disease or injury, including the increase in a preexisting disability caused by an on-the-job injury, for which FECA and VA benefits are payable concurrently.

(2) OWCP does not assign percent evaluations for disabilities. For FECA purposes, a claimant is either employable or unemployable. Therefore, if a veteran receives compensation for a particular disability and OWCP later grants FECA benefits because the same disability was aggravated by an on-the-job injury, an election is required between FECA and any future increases in disability compensation. It is not necessary to determine whether future increases in the evaluation of the service-connected disability are related to the on-the-job injury. Once FECA has been granted for a disability, all subsequent increases in compensation related to the same disability are subject to election.

(3) If the veteran's combined evaluation includes both disabilities which are subject to election and disabilities which are not subject to election, pay the veteran at the rate which can be supported by combining all disabilities which are not subject to election. If one of the veteran's service-connected disabilities was aggravated by an on-the-job injury so that an election between VA and FECA is required as to the increased evaluation, determine the rate of compensation by combining the evaluation prior to the on-the-job injury with the evaluations of any other disabilities which are not subject to election.]

Example No. 1. Veteran, a Government employee, is disabled by active pulmonary tuberculosis. The VA finds that the disease became manifest within the presumptive period after service, and grants service connection. OWCP finds the disease is related to the veteran's employment, and grants FECA. The veteran has potential eligibility to both FECA and VA benefits for the same disease and disability. An election is required.

Example No. 2. The veteran, a Government employee, has a service-connected back disability, rated 20 percent disabling. The disability is aggravated by an on-the-job injury. The VA increases the back disability rating to 40 percent. OWCP grants benefits for the back injury. An election is required between FECA and the *increased rate* of VA compensation. This does not bar continued payment of VA compensation for the back disability at the preinjury, 20 percent rate. If FECA is elected, an amended award will be prepared and processed with the 40 percent rating continuing the monthly rate for the 20 percent evaluation and, using special law code 10, withholding the difference between the 40 percent and 20 percent monthly rates under withholding code 1.

NOTE: When special law code 10 is used, send a copy of the current rating and award to Central Office (213B). Include a brief explanation of why special law code 10 was used.

Example No. 3. The veteran, a Government employee, has a service-connected knee disability, rated 20 percent disabling. The knee is reinjured in an on-the-job accident and OWCP grants benefits for the knee injury. The VA determines that injury does not warrant any change in evaluation of the service-connected disability and continues the 20 percent rating. The facts do not establish that FECA is predicated on the same disability as VA compensation, therefore, no election is required and the veteran may continue to receive 20 percent VA compensation for service-connected knee disability, along with the FECA award.

Example No. 4. The veteran, a Government employee, has a back condition rated 10 percent disabling and a knee disability rated 10 percent disabling. The knee is reinjured in an on-the-job accident and OWCP grants benefits for the knee injury. The VA increases the knee disability rating to 20 percent effective October 1, 1984 (30 percent combined

evaluation). Effective October 1, 1986, the VA increases the evaluation of the veteran's knee disability to 40 percent (50 percent combined evaluation). An election is required between FECA and any amount over the 10 percent rate paid for the knee disability. Pay the veteran at the 20 percent rate, effective October 1, 1984, with a type 1 withholding for the difference between the 30 percent rate and the 20 percent rate. Effective October 1, 1986, continue payment at the 20 percent rate but increase the withholding to the difference between the 50 percent rate and the 20 percent rate.

[**Example No. 5.** A veteran with a spouse and child is rated 20 percent disabled for a service-connected knee disability and 10 percent disabled for a service-connected back condition (combined evaluation—30 percent). OWCP finds that the back condition is related to the veteran's employment and grants FECA. Pay the veteran at the 20 percent rate. Establish a type 1 withholding for the difference between the 30 percent rate (with additional amounts for dependents) and the 20 percent rate.

Example No. 6. A veteran has the following service-connected disabilities: back condition—30 percent, heart condition—30 percent, knee disability—20 percent (combined evaluation—60 percent). The veteran's back is reinjured in an on-the-job accident and OWCP grants benefits for the back condition. The VA increases the evaluation of the back condition to 40 percent (combined evaluation—70 percent) and grants individual unemployability. An election is required between FECA and any amount over the 60 percent rate. Since the veteran no longer meets the requirements of 38 CFR 4.16, pay at the 60 percent rate and establish a type 1 withholding for the difference between the 100 percent and 60 percent rates. You must also consider whether the effect of all the veteran's disabilities which are not subject to election is such as to warrant a grant of individual unemployability based on an extra-schedular evaluation approved by Central Office. See paragraph 50.52. Pay the 100 percent rate only if the extra-schedular evaluation can be granted without regard to the disabilities which are subject to election.]

NOTE: If the veteran is a military retiree and the master record shows both SL codes 06 and 10, automatic adjustment of the award for VA legislative rate increases is not possible. The data exchange with the military finance center is not capable of showing the net amount payable. Therefore, you must write to the military finance center and show the net amount of compensation payable. See paragraph 29.28d(2).

b. **OWCP Obtains Election.** In any case when claims for FECA and VA benefits are involved, an election to receive VA benefits, will *never* be requested from the claimant by the VA. (See par. 29.21.)

c. **Irrevocability**

(1) If FECA basis was disability or death incurred prior to January 1, 1957, based on military service, an election to receive VA pension, compensation or DIC is irrevocable. However, if FECA was elected, a reelection to receive DIC benefits will be accepted.

(2) If FECA entitlement is based upon civilian employment, an election on or after September 13, 1960, to receive FECA or VA disability compensation or DIC based on the same disability or death, is irrevocable. However, if FECA was elected in lieu of VA pension prior to April 7, 1970, pension may now be authorized concurrently with FECA (par. 29.18b(2)).

(3) **FECA Terminates.** There is no bar to payment of VA benefits for the disability on which FECA benefits were predicated, after the FECA award ends.

Example. An on-the-job injury warrants an increase in a service-connected rating for a back disability from 20 percent to 40 percent. FECA grants benefits for the on-the-job back injury for the period March 1976 to April 1977 and the veteran elects FECA. The FECA award ends in April 1977. The veteran may continue to receive VA compensation for back disability at the preinjury, 20 percent rate, along with the FECA award and the VA award may be increased to the 40 percent rate for back disability, if otherwise in order, from the April 1977 date, the ending date of the FECA award. The increased rate of VA compensation is not subject to 38 CFR 3.31.

29.21 ADJUDICATION OF CLAIMS FOR DUAL BENEFITS

a. General. When there is notice of record that a claim has been filed with the OWCP, the claim will be adjudicated to determine benefits potentially payable. During development, the claims folder will be prominently marked so that premature award action will not be taken in the case.

(1) A letter will be sent to the Office of Workers' Compensation Programs, P.O. Box 37117, Washington, DC 20013-7117, advising them of:

(a) The VA benefit potentially payable;

(b) The disability(ies) on which such benefits are based;

(c) The effective date of award;

(d) The monthly rate payable;

(e) The effect of an election as to overall VA entitlement; and

(f) The name and address of the claimant;

(2) The OWCP will be requested to obtain the claimant's election and furnish the requesting office a copy.

(3) The claim will be disallowed and the claimant notified of the referral to the OWCP because of the prohibition against concurrent benefits and that he or she will be informed by that agency as to his or her dual entitlements and right of election.

b. **FECA Benefits Elected**

(1) When a copy of the claimant's election to receive FECA benefits is received prior to completion of adjudication of the claim, adjudicative action will be discontinued and the claim disallowed. The claimant will be notified of the fact and reason for disallowance. Notice of the right to appeal will *not* be included in the letter.

(2) If a veteran with a running award reports receipt of FECA benefits, reduce or discontinue payments (to the extent the same disabilities are involved) effective the first day of the second month following the month during which notice of FECA payments is received. See 38 CFR 3.500(e). If notice of FECA payments is received from a source other than the veteran, furnish predetermination notice and allow the veteran 60 days to respond before making any adjustment. Forward the claims folder to Finance by OF 41, Routing and Transmittal Slip. Ask Finance to send a letter to the OWCP over the signature of the Finance Officer showing the following:

(a) All periods covered by award action.

(b) The rate being paid at date of discontinuance.

(c) The total amount paid by the VA covering the period of dual entitlement.

c. **VA Benefits Elected.** When VA benefits are elected subsequent to award of FECA benefits, the OWCP will generally discontinue payments as of the end of the month following the month in which that agency receives the claimant's election to receive VA benefits and furnish the VA information as to FECA benefits paid.

(1) Determine the award effective date under normal effective date regulations. Annotate the award that it is "Subject to FECA payments of $ (amount) ."

(2) Award the entire compensation benefit payable for any service-connected disabilities for which an election is not required. See paragraph 29.20 above. Establish a type 1 withholding for the difference between the total compensation benefit payable and the amount payable for any service-connected disabilities for which an election is not required.

(3) Zero out the withholding when the total amount withheld will equal the amount of the FECA payments. If it appears that there may be future rate changes before the withholding is zeroed out, establish a master record diary under reason code 30 for the month after that during which the withholding will zero out. When the diary matures, determine if the "zero out" date must be adjusted because of legislative or other rate changes. The objective is to withhold an amount equal to the amount of FECA payments received by the veteran for disabilities subject to election. If necessary, request assistance from Finance in calculating the "zero out" date.

SUBCHAPTER V. RETIRED PAY CASES

29.22 GENERAL

a. **Election Requirements.** Although there is a statutory restriction on concurrent payments of compensation or Section 306 or Old Law pension and retired pay (38 U.S.C. 3104(a)), there is [currently] no restriction on the right of election, reelection or waiver of retired or retirement pay by persons of the Armed Forces, or by commissioned officers of the National Oceanic and Atmospheric Administration and the Public Health Service (38 U.S.C. 3105). The basic legislative intent is that the total of the monthly payments to the veteran may not exceed whichever is the greater, the VA benefit or the retired pay (38 CFR 3.750). Except in Improved Pension cases, election is not required.

(NOTE: Naval and Marine Corps enlisted personnel with 20 or more but less than 30 years of service may request transfer to the Fleet Reserve or Fleet Marine Corps Reserve and receive retainer pay. The retainer pay is considered a form of retired pay and VA compensation or Section 306 or Old Law pension may not be awarded concurrently, however, retainer pay may be waived under 38 CFR 3.750 in order to receive compensation or pension.)

b. **Agency Responsibility for Overpayment**

(1) **VA Responsibility.** Adjudication Division personnel are cautioned that concurrent payments of compensation or Section 306 or Old Law pension and retired pay without an election or the establishment of an effective waiver (even when [ ] VA had received no notice that retired pay had been awarded), will result in an overpayment which is the responsibility of [ ] VA to collect.

(2) **Service Department Responsibility.** However, when VA benefits have been awarded and the veteran subsequently becomes entitled to retired pay, the burden is on the service department to make inquiry to [ ] VA. If retired pay is awarded without such inquiry, responsibility for a resulting overpayment will be with the service department.

c. **Initial Action Upon Receipt of Claim.** To avoid overpayments, VA Form 21-526 [Veterans Application for Compensation or Pension Austin DPC] or its equivalent, reports of separation and other pertinent material will be carefully examined to ascertain whether retired pay was granted. If, after review of the claims folder, it cannot be determined whether this benefit is being paid by the service department, such information will be requested from the veteran. Any conflicting information, however, will be subject to verification by the service department (par. 21.10).

29.23 ACTIONS UPON DETERMINATION OF ENTITLEMENT

If the veteran in receipt of retired pay (including a veteran on TDRL--see par. 29.24) is determined entitled to disability compensation, no award action will be taken in the absence of an election or effective waiver by the veteran. The veteran's application for VA benefits on VA Form 21-526, dated November 1977 or later will constitute an election or waiver in the absence of a specific statement to the contrary. 38 CFR 3.750(c)

a. **Claim Accompanied by Statement Negating Election.** If the veteran submits with the application a statement that he/she does not want the claim to constitute election or waiver (or if VA Form 21-526, [ ], does not contain the election statement over the veteran's signature box), the following action will be taken at the time the initial determination of entitlement to disability compensation or pension is made:

(1) **Disallowance.** A disallowance will be processed under disallowance code 19, "Veteran in receipt of retired pay."

(2) **Notice to the Veteran.** The veteran will be informed by dictated or VA form letter of the disabilities for which service connection has been granted and those denied and of the rate(s) payable (including scheduled future changes). He or she will be furnished VA Form 21-651, Election of Compensation in Lieu of Retired Pay or Waiver of Retired Pay to Secure Compensation or Pension from the Department of Veterans Affairs (38 U.S.C. 3104(a)-3105), in quadruplicate and informed that if compensation is desired he or she should complete and return the original and two copies to the office from which it was transmitted. The veteran will be further informed as follows:

(a) **Statutory Restriction.** That there is a statutory restriction on concurrent payments of compensation and full payment of retirement pay from the Armed Forces at the same time and, therefore, the claim must be disallowed until the enclosed VA Form 21-651 is

returned; and that if VA compensation is elected within 1 year from the date of the letter, entitlement to VA benefits will be from the effective date shown, as if the claim had not been denied.

(b) **VA Payments Effective Date of Reduction of Retired Pay.** That if the veteran waives a portion of retired pay, the full rate of VA compensation payments will begin as of the effective date of reduction of retired pay.

[NOTE: Recoupment of a prior award of readjustment or separation pay by the Service Department does not affect the VA offset for receipt of retired pay. However, repayment of amounts of readjustment or separation pay previously recouped by [ ] VA may be in order. (See subpar. 29.40a(6).)]

(c) **Reopening of Claim.** That the claim may be reopened at anytime after 1 year, in which event entitlement to compensation must be redetermined on the basis of the degree of the service-connected disability(ies), if any, which may exist at the time the claim is reopened. Upon reopening, the folder will be referred to the rating board for an amended or confirmed and continued rating.

(3) **Eligibility to Ancillary Benefits.** When the rating decision establishes basic eligibility to dependents' educational assistance, VA Pamphlet 22-73-3 will be enclosed and the veteran informed of the potential eligibility. When the file reflects the existence of potentially eligible persons, VA Form 22-5490, [Application for Survivors' and Dependents Educational Assistance] will also be enclosed. (See par. 23.10c re vocational rehabilitation, par. 30.06a re automobiles.)

(4) **Type of Letter.** FL 21-826 may be used for this purpose in connection with claims for disability compensation.

(5) **Income Determination.** In determining income for Section 306 or Old Law pension purposes, the amount of retired pay waived will be included as income following the 10 percent statutory exclusion (38 CFR 3.262(h)).

(6) **Notice of Insurance Activity.** A copy of the rating will be attached to the letter of disallowance and forwarded to the office of the appropriate Insurance activity. (See par. [49.06a].)

b. **Election or Waiver on File.** The military finance centers will accept award action by [ ] VA as certification that a waiver is on file with [ ] VA without requiring "hard copy" documentation. [ ] VA is responsible for providing military finance centers with "hard copy" documentation only upon specific request. Waiver forms are not to be forwarded routinely and award actions are not to be deferred pending receipt of confirmation of waiver of retired pay. When a VA Form 21-526, constituting an election or waiver, or VA Form 21-651 is received from the veteran and entitlement to disability compensation is determined, award action will be taken in accordance with instructions in paragraph 29.27.

c. **Notice to Insurance Activity.** See paragraph [49.06a].

d. **Improved Pension Claims.** Effective October 1, 1980, Improved Pension may be paid to a veteran entitled to or in receipt of military retired pay without requiring waiver.

(1) **Original or Reopened Claims**

(a) The amount of retired pay will be considered income as with any other retirement income. The amount will be entered as a type "M" retirement.

(b) A special law code 06 will be entered in the special law code field or in the miscellaneous code field (par. 15.32).

(2) **Elections.** If a veteran makes an election from compensation or Section 306 or Old Law pension to Improved Pension, a dictated letter will be sent to the appropriate service department finance center certifying the date of award of Improved Pension so that payment of retired pay may be resumed.

29.24 REMOVAL FROM TEMPORARY DISABILITY RETIREMENT LIST

Upon receipt of notice from the service department (or routine review of a claims folder), if it is noted that a veteran has been removed from TDRL (Temporary Disability Retirement List), the action prescribed by this paragraph will be required to insure the integrity of the master record data. Action is also required to insure that the veteran is aware of his or her rights.

a. **Veteran in Receipt of Compensation or Section 306 or Old Law Pension.** When notification is received from a military finance center indicating the veteran in receipt of compensation or Section 306 or Old Law pension is no longer receiving retired pay benefits, a transaction 02M will be processed with an 00 entry to field 043. This will remove the special law code 06 and prevent the issuance of future messages to the military finance center.

b. **Veteran Not on VA Rolls.** If the veteran has never filed claim for compensation or pension, or claim was disallowed for [ ] receipt of retired pay, the following will apply:

(1) **Claims Folder at Regional Office**

(a) The Authorization activity will send a letter to the veteran at his or her last known address of record. Generally, the notice of release from TDRL will contain the veteran's address in the lower left corner. The letter should state that the VA has noted the veteran's discharge from TDRL and encourages filing a claim for disability benefits even if the veteran was placed on the permanent disability retired list or received disability severance pay.

(b) If no previous disability claim was filed, VA Form 21-526 should accompany a letter informing the veteran of possible entitlement to VA compensation or pension.

(c) If a disability claim was previously filed and is in a disallowed status because the veteran was in receipt of retired pay, VA Form 21-4138, Statement in Support of Claim and VA Form 21-651, should accompany the letter for use by the veteran for requesting the reopening of the claim.

(2) **Claims Folder at Another Regional Office.** If the claims folder, following an inquiry to BIRLS, is located at another regional office, the notice from the service department will be sent to that office.

(3) **No Claims Folder Exists.** If no claims folder exists, a letter should be sent informing the veteran that the VA has been notified of the discharge from TDRL and encourages filing a claim for disability benefits. A VA Form 21-526 should accompany the letter.

c. **Removal From Retired Pay Status and Award of Severance Pay.** When notification is received from a military finance center indicating the veteran in receipt of compensation or Section 306 or Old Law pension has been removed from the retired pay status and awarded severance pay, an amended award action will be taken in accordance with established severance pay award procedures (par. 29.43) with the additional entry of 00 under special law code to remove the 06. A full explanation of the action taken will be furnished the veteran.

29.25 ELECTIONS OR WAIVERS IN CASES OF INCOMPETENTS

If a service department has found a veteran is mentally incompetent, an election or waiver may be made only by an individual recognized by one of the military services as trustee or fiduciary and, if required under the State law, after the court has authorized the fiduciary to make the election or waiver. [Start the withholding to recoup severance pay effective date of last payment.]

a. **Incompetency Determination.** A board of medical officers or physicians is required, to find a member of the Armed Forces mentally incompetent or to determine restored competency (37 U.S.C. 602). If the board finds the member is incompetent, the Secretary of the service department concerned designates a trustee to receive the veteran's retired pay.

b. **Rating Board Referral.** If a service department has found a veteran mentally incompetent, the claims folder will be referred to the rating board for a memorandum competency rating. Ordinarily, this rating action will be based on the Physical Evaluation Board findings. If essential, a VA examination will be requested to be conducted in accordance with 38 CFR 17.952.

c. **Authorization Activity.** Concurrently with rating actions, Authorization shall develop to determine if a trustee has been appointed by the service department and to identify that person. No election or waiver based on a signature on VA Form 21-526 [ ]may be accepted in the case of a veteran held to be incompetent by a service department.

d. **Request for Appointment of a Fiduciary.** If a final VA rating of incompetency is made, a VA Form 21-592, Request for Appointment of a Fiduciary, Custodian or Guardian, will be forwarded to the VSO for the appointment of a fiduciary. The fiduciary appointed by the service department will be identified as the person recognized as fiduciary for retired pay payment purposes and recommended to serve as the VA fiduciary.

(1) **Service Trustee Unwilling To Serve as VA Fiduciary.** If the Veterans Services Officer finds that the military trustee is not acceptable to be a VA fiduciary or, if already appointed, no longer is willing to serve, the Veterans Services Officer certifies a VA fiduciary and explains to the Adjudication Division why the military trustee could not be recognized as a fiduciary. The Authorization activity forwards the VSO's report with the waiver to the applicable service department and requests the service department to recognize the proposed VA fiduciary as trustee to waive retired pay.

(2) **Supervised Direct Payment.** If the Veterans Services Officer recommends a supervised direct payment to the beneficiary, a fiduciary nevertheless is required for election and waiver if the veteran is rated incompetent.

(3) **Spouse-Payee.** On receipt of waiver of retired pay from a spouse-payee-trustee, the Authorization activity will prepare and furnish to the Veterans Services Officer, VA Form 21-592, to determine suitability of the spouse-payee-trustee or to secure another fiduciary.

(4) **Institutional Payee**

(a) **Non-VA Institution.** If the military service has designated the Director or Superintendent of a non-VA institution as trustee, the trustee may waive retired pay and apply for VA benefits. However, election of VA benefits may not be made until this fiduciary is recognized by the VA.

(b) **VA Institution.** VA medical center Directors may *not* make an election to receive VA benefits in lieu of retired pay. If VA benefits are to the veteran's advantage, VA Form 21-592 will be referred for recognition of a fiduciary to make the appropriate election.

e. **Action Upon Certification of Fiduciary.** If a fiduciary is mutually recognized by the VA and the concerned service department, prepare a disallowance under disallowance code 19, "Veteran in receipt of retired pay," and notify the fiduciary as provided in paragraph 29.23a without regard to the election incorporated into VA Form 21-526 [ ]. The provisions of paragraph 29.32b shall not be applied in these cases.

f. **Reduction of VA Benefits.** If VA benefits have been elected as the greater benefit and they are subsequently reduced or terminated because of improvements in the veteran's condition or excessive estate under 38 CFR 3.557, the fiduciary is to be advised of the right to waive VA benefits and reelect retired pay.

g. **Competency Restored.** As with the finding of incompetency, the restoration of competency requires a finding by a board of medical officers or physicians to satisfy the service departments. This examination report and VA rating of restored competency must accompany any reelection of retired pay by the veteran and must be submitted to, and accepted by the service department before action on the election by the veteran.

29.26 SERVICE DEPARTMENT REQUEST ON DD FORM 1285

Military finance centers will, when a reservist becomes entitled to receive retired pay (e.g., reaches age 60), forward DD Form 1285, Request for VA Compensation or Pension Information, (in duplicate) to the regional office designated for that finance center, for a BIRLS inquiry.

a. If BIRLS does not indicate that a claims folder exists, the form will be completed at that initial point and both copies returned to the finance center.

b. If a claims folder has been established, the form, with BIRLS message attached, will be referred to the regional office of jurisdiction.

(1) If a claim for compensation benefits has not been filed or has been denied or is pending, the form will be completed to show that information.

(2) If the veteran is in receipt of compensation or Section 306 or Old Law pension, the following actions will be taken.

(a) VA Form 21-651 will be sent to the veteran. No award action will be taken at this time; payments will be allowed to continue.

(b) Special law code 06 will be entered into the master record.

(c) DD Form 1285 will be completed to show the VA benefit being paid *and* the date of release of the VA Form 21-651 to the veteran.

(d) No control will be established for return of the VA Form 21-651.

(3) The originals of DD Form 1285, completed under this subparagraph, will be returned to the finance center. The copy will be filed in the claims folder.

29.27 PREPARATION OF AWARDS

a. Special Law Code. Special law code 06, will be used to identify an award to a veteran having simultaneous entitlement to compensation or pension and retired pay, and that the veteran has waived the necessary amount of retired pay or has elected to receive disability compensation or Section 306 or Old Law pension in lieu of retired pay. Conversely, when the veteran's entitlement to retired pay has terminated (e.g., removal from TDRL), the special law code 06 must be removed by introduction of two zeros to this field. (See par. 15.32b re order of precedence when there is required entry of an additional special law code.)

b. Special Law Code 06 Not for Use. Special law code 06 is NOT for use when a veteran receiving EOR or ORP benefits elects to receive compensation as a greater benefit, since each of these benefits is paid by the VA. However, veterans entitled to EOR are carried on the applicable service department retired list and, whether being paid EOR or compensation, notice of death must be furnished as provided in paragraph 31.05d. Special law code 06 is also NOT for use in a compensation or pension award to a veteran who waived retired pay for the purpose of computation of civil service annuity (which is payable concurrently with VA benefits).

c. Branch of Service and Service Number. In order that notice of award changes may be automatically issued to the proper service department extreme care must be taken to insure that rating data for entry carries the code for the branch of service responsible for payment of retired pay, irrespective of the branch of service code otherwise assignable. (See par. 49.10 for codes.) In addition, to insure proper interchange of information, the service and/or social security number must be recorded in the master record.

EXAMPLE 1: Army Air Corps (i.e., no service subsequent to September 26, 1947) will be coded Army Air Corps (Code J) unless retired pay is being paid by the Air Force (Code F).

EXAMPLE 2: Veterans separated from the Army Air Corps prior to September 27, 1947, but served in the U.S. Air Force Reserve and subsequently retired from the reserves with retired pay. Code as Air Force (Code F).

d. **Award Action**

(1) **Generated Data Transactions.** Award action will result in generation of a tape (see fig. 29-2 for data record format) to the military finance centers if the following criteria are met:

(a) Master record type is A, B or E (if terminated this cycle).

(b) Payee code is 00.

(c) Special law code (FI 043) or miscellaneous code (FI 066) is 06, [and a transaction 09, 13, 28 or 98 updated the master record this cycle.]

(d) Entitlement code ends in 1.

(e) A transaction [ ], 11, [ ] updated the [master] record this cycle.

(2) **Effective Dates**

(a) **Original and Reopened Awards.** Screen 401 should be used to enter the applicable amount of compensation to be withheld and the date of discontinuance of the withholding. (See par. 15.23b.) The effective date of payment (or full payment in a total waiver case) will not be earlier than the first day of the month corresponding to the cycle month in which the award will process and no award will be submitted to the last cycle of a processing month.

(b) **Hines Schedule of Operations.** Careful attention must be paid to the Hines schedule of operations to ascertain that awards contain the correct effective dates of payment and are not submitted to the last cycle of a processing month.

(c) **Increases.** The effective date authorizing increased benefits is determined as in subparagraph (a) above.

(d) **Decreases.** An award authorizing reduced benefits will show the retroactive date in accordance with existing law and regulations.

(e) **Compensation Exceeds Retired Pay.** The commencing date of the award will be the earliest date from which entitlement is established as determined under the basic rules. It will provide for payment of a differential rate in the amount by which the rate of compensation exceeds the rate of retired pay from that date to the date (as determined by subpar. (a) above) that full payment of compensation may be authorized. For the periods authorizing the differential rate, the amount not paid because of receipt of retired pay will be shown as a type 1 withholding which will be zeroed out on the full rate award line.

(f) **Controls in Total Waiver Cases.** Upon receipt of a data transaction showing compensation to exceed retired pay, the finance centers will automatically release to the regional office of jurisdiction certification of the gross retired pay and effective dates for the previous 2 years. The regional office will maintain a 30-day control for receipt of the certification to ascertain that the correct differential was authorized or make corrections, if needed. While award action and appropriate end product credit may be taken in the absence of certification of the actual amounts of retired pay, end product 290 diary must be maintained until the certification has been received and all remaining issues have been resolved.

(3) **Overpayments**

(a) **VA Responsibility.** The VA is responsible for processing awards showing effective dates determined in accordance with subparagraph (2) above. If the VA fails to authorize and award from the proper date, resulting in duplicate payment of compensation and retired pay, the resulting overpayment will be recouped by the VA.

(b) **Military Finance Center Responsibility.** The military finance centers are responsible for timely processing of waivers based on VA awards. If the award is processed in accordance with instructions and the military finance center fails to take timely waiver adjustment, the resulting overpayment will be recouped by the finance center.

(4) **Tax Exemption.** On all awards, when all or part of the entitled rate of compensation or Section 306 or Old Law pension cannot be paid in the full amount from the date of entitlement due to receipt of retired pay and waiver is made within 1 year, the amount of compensation or Section 306 or Old Law pension which could not be paid is tax exempt. The veteran will be informed of such tax exemption eligibility by Target generated letter, VA Form 20-822a, Control Document and Award Letter, and attachments, dictated letter or FL 21-826 as appropriate, which will include the monthly rate and inclusive dates for amounts not payable due to receipt of retired pay. Notice of tax exemption eligibility will not be required when retirement is based on disability as disability retired pay is already exempt.

(5) **Reelections of Compensation**

(a) **General.** When a veteran reelects compensation or Section 306 or Old Law pension having previously elected to continue to receive retired pay, the commencing date of entitlement to VA benefits will not be prior to the date of reelection 38 CFR 3.401(e). However, when the reelection is in conjunction with a claim for increase or a reopened claim, eligibility to VA benefits will be effective as determined under 38 CFR 3.400(o) or (r), subject to adjustment for the retired pay paid from that date as provided above. (See par. 37.05)

(b) **Veteran in VA or Service Hospital.** In cases in which the veteran did not waive retired pay and a VA Form 10-7131 or VA Form 21-8358, Notice to Veterans Administration of Admission to Uniformed Services Hospital, is received showing hospitalization for a service-connected disability, and it appears that VA benefits payable would be greater than the retired pay, the veteran will be informed of the VA benefits payable, and if a rating under paragraph 29 or 30 of the rating scheduled is involved, of the temporary nature of benefits. He/she will also be informed of eligibility to benefits from the date of hospital admission if a formal election is filed within 1 year from the date of notice. If the VA Form 21-651 is timely received, the award would be made effective from the date of hospitalization subject to retired pay paid from that date. (See also pars. 27.14 and 53.02b.)

29.28 CORRESPONDENCE WITH THE MILITARY FINANCE CENTERS

a. **Errors in Effective Date of Payment.** If an award is received in the military finance center with an effective date of payment or increase other than that authorized in paragraph 29.27d(2), the military finance center will effect an offset from the first of the current month and will so advise the regional office of jurisdiction.

b. **Miscellaneous VA Errors.** Regional offices will occasionally discover errors in the VA master record (i.e., lack of SL 06) which require corrective action (i.e., 02M) other than award action. As these corrections will not be transmitted by the data exchange, regional offices must request the military finance centers to make any necessary adjustment by dictated letters. Such a letter must clearly state that a data exchange transaction cannot be accomplished for that particular action and that the military finance center must manually adjust the case. The requested date of initial offset or increased offset cannot be earlier than the first day of the following month if the letter is released after the 15th of the current month. If the letter is released prior to the 15th of the current month, the requested date of initial or increased offset cannot be earlier than the first day of the current month.

c. **Discrepancies.** The military finance centers will notify the regional offices of discrepancies in award and waiver dates. Such notice will indicate that the inquiry is the result of a data exchange discrepancy. These requests must be handled on an expedited basis and the military finance centers will be furnished a prompt reply in all cases, including cases for which no corrective action is required. In emergent cases, the finance centers will contact the regional office by phone. If requested, the regional office will furnish written confirmation of the action taken as a result of the phone inquiry. The military finance centers will maintain a 30-day suspense on automated data exchange inquiries.

d. **Writeouts**

(1) **Compensation Awards.** VA Form 20-8270, C&P Master Record—Audit Write, will issue in compensation awards only if there is no veteran's social security number in the master record [or the master record shows both SL codes 06 and 10.] All other compensation transactions will be transmitted to the finance centers by magnetic tape.

[(a) **No Veteran's Social Security Number.** VA Form 20-8270 (message code 722, 723, or 724) with the additional legend "INSUFFICIENT SERVICE DATA" will issue if there is no veteran's social security number in the master record. Upon receipt of the VA Form 20-8270 in the regional office, immediate action will be taken to enter the veteran's social security number into the master record. As no data exchange transaction is generated in this circumstance, the military finance center must be requested to make any necessary adjustment as provided in subparagraph b above. If offset cannot be accomplished effective the date of the award that generated the VA Form 20-8270, the resulting overpayment will be recouped by the VA.

(b) **Master Record Shows Both SL Codes 06 and 10.** In all cases, the data exchange transactions generated to the military finance centers contain the gross amounts payable. IN FECA cases (use of SL Code 10 required) the amount subject to offset is the net amount. VA Form 20-8270 (message code 702) with message "SL 10 REVIEW—SL 06 CASE" will issue if the master record shows both SL 06 and 10. Upon receipt of the VA Form 20-8270 in the regional office, a dictated letter as provided in subparagraph b above will be sent to the military finance center advising the amount (net only) subject to offset.]

(2) **Pension Awards.** Computer processing of pension master records with special law code 06 provides for the automatic issuance of VA Form 20-8270 to the appropriate military finance center for the adjustment or restoration of retired pay, if required, as a result of:

(a) Original or reopened award - Msg 869, SL 06 WAIVER CASE—VA ORIGINAL OR REOPENED AWARD.

(b) Amended award or computer updating of a scheduled future rate change - Msg 723, SL 06 WAIVER CASE—VA RATE CHANGE.

(c) Termination or computer updating of a scheduled future termination - Msg 722, SL 06 WAIVER CASE—VA PAY TERMINATED, (Exception: Interruption under 38 CFR 3.557 (see par. 29.30).)

(d) Computer-generated adjustments required by legislation - Msg 724, SL 06 WAIVER CASE—VA LEGIS INCREASE ___(Eff. date)___ .

NOTE: The additional legend "INSUFFICIENT SERVICE DATA" is appended when the veteran's record does not contain a valid social security (or service) number and/or branch of service code necessary for identification of the correct retired pay record or service department finance center to effect appropriate action. In these instances, the "Routing" on the VA Form 20-8270 will be "INPUT" so that corrective entry can be made to the master record and the VA Form 20-8270, so annotated, can be promptly sent to the proper finance center.

e. Waiver Forms. Although a waiver by the veteran must be on file prior to award action, waiver forms are to be submitted to the military finance centers only if specifically requested by the finance centers (par. 29.23b.) Waivers are *not* to be forwarded routinely and award actions are *not* to be deferred pending receipt of confirmation of waiver of military retired pay.

(1) **VA Form 21-651a.** This form will be used if waiver (see par. 29.23b) or information not requiring a dictated letter is being furnished to the military finance centers. This form is issued in triplicate with interleaved carbon (see subpar. f below re transmittal). Section I of the form will be completed by an adjudicator for review by an authorizer. If approved, the authorizer will sign in the name of the Adjudication Officer. Entries in section I will be made as follows:

(a) **Name of Veteran.** Complete the veteran's name as shown on the original or reopened claim.

(b) **Address of VA Office.** Enter the complete address of the VA regional office of jurisdiction.

(c) **File Number.** Enter the veteran's VA file number.

(d) **Service Number.** Enter the veteran's service serial number, if other than social security number.

(e) **Social Security Number.** Enter the veteran's social security number.

(f) **Address of Military Finance Center.** Enter the appropriate address as shown on the reverse side of the form.

(g) **VA Benefits to Which Entitled.** The entry(ies) in this item will be the total amount of VA benefits which would be payable except for receipt of retired pay.

(h) **Effective Date.** Enter the earliest date from which entitlement is established; e.g., day following date of discharge, date of claim, or date from which the finance center has requested payment information.

(i) **VA Benefits Awarded.** Enter the amount(s) of benefits actually awarded. When there is insufficient space to show all rates, make a last line entry "See Reverse Side," and show all additional rates on the reverse side.

(j) **Effective Date.** Enter the effective date(s) of the rate(s) shown for VA benefits awarded. Entries in this item should be on the same lines as the rates for the benefits awarded.

(k) **Date of Preparation.** The current date will be shown in all cases.

(2) **VA Form 21-651.** This form will be used when it is necessary to obtain the veteran's (or fiduciary's) signature on the election or waiver (pars. 13.22d(1) and (2) and 29.23b). This form is issued in quadruplicate with interleaved copies for referral (unbroken) to the veteran (or fiduciary) with instruction for return of the completed original and first two copies. (See subpar. g below re transmittal to military finance center if specifically requested by the finance center.)

(a) The top portion (items 1-5) will be completed (as provided in subpar. (1) above) when it is being furnished to the veteran.

(b) When VA Form 21-651 is returned by the veteran (or fiduciary) with section I properly completed, section II will be completed for referral of the form to the military finance center *only* if requested by the finance center. Otherwise, the form will be filed in the claims folder and any necessary award action will be taken in accordance with paragraph 29.27d.

(c) The "Address of Service Department" will be completed by entry of the appropriate address as shown on the reverse side of the form.

(d) The balance of section II will be completed as provided for these items in section I of VA Form 21-651a.

f. **Transmittal to Military Finance Center.** The original and one copy of VA Form 21-651 or 21-651a, completed to show the amount(s) and effective date(s) of VA compensation or Section 306 or Old Law pension, will be sent to the appropriate military finance center at the address shown on the reverse side of the form.

(1) **Control Copy.** If response from the military finance center is required in order to make or adjust an award, the control copy will be out-filed in the claims folder (par. 1.09e), to be replaced by the completed original when returned by the military finance center.

(2) **Attachment to VA Form 21-651a.** When VA Form 21-651a is transmitted at the request of the military finance center, a photocopy of the page of VA Form 21-526 or 21-526e containing the veteran's signature and the waiver statement will be attached.

g. **Military Finance Center Action.** The finance center will notify the submitting VA regional office, on the portion of VA Form 21-651 or 21-651a reserved for that purpose, of the total amount of retired pay, the amount deducted therefrom, or the discontinuance.

h. **[Legislative] Increases in Compensation.** The service department is on notice as to the increased compensation rate changes required by statute and has no authority to pay the veteran in excess of the amount of retired pay less the amount of the compensation payment as amended by the statute.

(1) **Automatic Notice to Military Finance Centers.** In order to assist the military finance centers in avoiding overpayments (recovery of which becomes their responsibility [if the VA furnishes notice of the increased rate within 90 days of the legislative increase]), when the legislative change is automatically effected by the computer, data exchange transactions showing the increased rates are provided to the military finance centers. Data exchange transactions will be transmitted only for accounts that were automatically adjusted. The finance centers will update their records and effect the necessary reduction in retired pay.

(2) **Identification Discrepancies.** Inquiries may be received from the finance centers on cases included on the VA tape for which they could not locate a matching account. [ ] The claim folder shall be reviewed to determine if the mismatch was due to erroneous data in the master record. If it is indicated that the mismatch was due to erroneous identification data (branch of service, name discrepancy, or social security number errors), the appropriate service department shall be furnished the correct data. A VA Form 21-651a shall be prepared and released to the proper finance center showing the old and new gross rates of compensation, as well as correct identification data. The form shall be annotated as follows: "Increase—PL ____." Simultaneous action shall be taken to correct the master record.

(3) **Absence of SL Code 06.** Inquiries may also be received on cases indicated by retired pay records as waiver cases but which were not included on the tape record. Generally, this situation would arise because special law code 06 was absent from the master record. Upon receipt of such an inquiry, the adjudicator shall confirm that proper automatic award adjustment has taken place and that a waiver is of record. If a waiver is on file and adjustment has been accomplished, or is not necessary (e.g., statutory "q" award), the adjudicator shall forward VA Form 21-651a to the finance center with appropriate payment information and the legend prescribed in subparagraph (2) above. Simultaneous action shall be taken to correct the master record.

(4) **Waiver Not on File.** If in response to a finance center inquiry a case is reviewed in which compensation was awarded without a waiver on file, the account shall be suspended and a waiver shall be solicited from the veteran. The adjudicator shall dictate a letter of explanation to the veteran and furnish VA Form 21-651 for completion and return to the regional office. Upon receipt of the signed VA Form 21-651, or at the expiration of the control period, the adjudicator shall adjust or terminate the award, as appropriate. The finance center shall be notified of the action taken and advised if a signed VA Form 21-651 could not be obtained from the veteran.

(5) **Insufficient Service Data.** VA Forms 20-8270 (message code 723) will be received in the regional office with the additional legend "INSUFFICIENT SERVICE DATA" for cases not included on the finance center tapes because of inadequate service data. These forms will carry a routing to "INPUT" for expedited corrective action (02M) under MP-6, part IV, supplement No. 6.1, paragraph 401.04, message code 723. [ ] Subsequent to the entry of the corrected data into the master record, [a dictated letter (see par. 29.28b) will] be dispatched to the appropriate service department finance center (see reverse of VA Form 21-651 or 21-651a for address). For cases in which no adjustment may be made but service data are insufficient, VA Form 20-8270 with message code 861 will be issued. No notice to the service department is needed in these cases, but master record data shall be corrected so that automatic notification may be furnished upon future adjustment. Lack of social security number will cause issuance of the insufficient service data message even though the record contains a service serial number.

(6) **NOT ADJUST Messages.** Amended awards prepared in the regional offices to effect the legislative increase will generate data exchange transactions to the military finance centers. These amended awards will be reflected on the tapes generated from the cycle run during which the awards processed. [Every effort shall be made in the regional offices to expedite award action on "NOT ADJUST" messages. After 45 days, the military finance centers will generate listings of cases for which they have received no data exchange transaction or award adjustment notice. These listings will be furnished to the regional office of jurisdiction.

(a) **Action Taken Within 90 Days.** The military finance centers will recoup any overpayments that may result from a legislative increase when notified by the VA of the rate change within 90 days of that legislative increase.

(b) **Action Taken After 90 Days.** The VA will recoup any overpayments that may result from a legislative increase when the military finance centers are notified of the rate change 90 days or more following that legislative increase.]

29.29 REDUCTION UNDER 38 CFR 3.551

a. **General.** Retired pay is not subject to reduction during the veteran's hospitalization. When a veteran who has waived a portion of retired pay to receive Section 306 or Old Law pension is hospitalized, award action will be taken under 38 CFR 3.551 and the appropriate service department will make the appropriate adjustment to retired pay based on the generated data transaction. Similarly, the service departments will notify the VA of changes in the veteran's hospitalization status when such information is first received by that agency. The reciprocal action will insure that the veteran will receive full entitlement, but not in excess thereof, on each benefit under 38 U.S.C. 3105.

b. Notice to Service Department

(1) **Old Law Pension Reduced.** A dictated letter showing the rate (and effective date immediately prior to the 38 CFR 3.551 reduction and the reduced rates and effective dates from the award data, through the first future, will be furnished with the information "Withholding Under 38 U.S.C. 3203(a)(1)—Hospitalized Over 6 Months." No adjustments in retired pay will be required.

(2) **Old Law Pension Restored to Full Rate.** When Old Law pension reduced under 38 CFR 3.551(b) is restored under 38 CFR 3.556, notice of this action will be furnished to the service department by dictated letter to reflect the full rate of entitlement as restored from the date of reduction; otherwise, for an incompetent veteran, the date of departure from the hospital 38 CFR 3.556(a)(1). The explanation, "Hospitalization terminated _____," will be shown.

29.30 DISCONTINUANCE UNDER 38 CFR 3.557

a. **General.** The provisions of 38 CFR 3.557 do not apply to service department retired pay. They do apply, however, to emergency officers' retirement pay except for amounts authorized for a parent's appointment and for care and maintenance (par. 28.16).

(1) Whenever VA benefits are to be discontinued under 38 CFR 3.557, the award action will be amended to effect a total withholding (par. 28.16a(1)) and the veteran's fiduciary or trustee will be notified as provided in subparagraph c below, that retired pay may be reelected. Chg 382

(2) If such reelection is made, VA benefits will be discontinued by VA Form 21-8046, Payment Notice (Stop—Suspend—Resume), effective the first of the month after the date of the reelection and may not thereafter be paid unless VA benefits are reelected, or an appropriate waiver of retirement benefits is made.

(3) If there is a subsequent reelection of VA benefits, the effective date of resumption of VA benefits will be the date of receipt of reelection 38 CFR 3.401(e), and the VA award action will be taken as provided in paragraph 29.27d.

b. **Notice to Service Department.** Notice by the adjudicator to the service department of the total withholding of VA benefits under 38 CFR 3.557 will not be required as no adjustment of retired pay may be made except under the conditions described in subparagraph c below. However, a data exchange transaction will issue automatically. Upon request, the service department will be informed of the effective date and reason for the withholding.

c. **Notification to Fiduciary or Trustee.** The notification furnished the veteran's fiduciary or trustee will include a statement of the reason for discontinuance of the veteran's VA award, and the following information relative to retired pay:

(1) That the veteran may be entitled to payments of service retirement benefits;

(2) That to receive retirement benefits, a reelection of such benefits (a withdrawal of waiver of retired pay) must be filed;

(3) That the service department determines the effective date of any retired pay payable;

(4) That, if service retired pay is reelected, VA benefits may not thereafter be paid unless reelected, or unless retired pay is waived; and

(5) That subsequent VA payments, if made, will be payable only from the date of receipt of reelection of VA benefits.

d. **Action on Reelection of Retired Pay.** A specific form will not be required for this purpose. Any communication which specifically requests withdrawal or cancellation of the waiver of retired pay will be acceptable as a reelection of retired pay.

(1) If the reelection is initially received in the VA, the award will be terminated as provided in subparagraph a(2) above. A copy of the reelection will be filed in the claims folder. The original will be forwarded to the appropriate service department finance center by covering letter furnishing the reason for and date of termination of VA benefits.

(2) If the reelection is initially filed with the service department, the finance center will forward it to the VA regional office having custody of the veteran's records, by covering letter, furnishing the gross amount of retired pay to which the veteran is entitled. Upon receipt in the regional office, action will be taken as provided in subparagraph (1) above.

(3) When retired pay is restored as the result of reelection, the service department will inform the VA of the gross amount and date of restoration. This notice will be filed in the claims folder as a flash that VA benefits cannot be resumed under 38 CFR 3.558 unless a new VA Form 21-651 is filed or a claim for VA benefits is accepted as an election or waiver.

29.31 RETROACTIVE WAIVER OF RETIRED PAY

a. **General.** Retired Regular Officers employed in Federal civilian positions are subject to reduction of retired pay under the Dual Compensation Act, 5 U.S.C. 5532. Based upon Comptroller General Decision B-190420 and an unpublished General Counsel Opinion dated January 9, 1980, retroactive waiver of retired pay will be honored by the VA in these cases.

b. **Processing Retroactive Waivers.** The procedure for processing retroactive waivers is as follows:

(1) **Notice Received.** Upon notification that a Regular Officer is applying for retroactive waiver due to reduction under the Dual Compensation Act, the VA will determine the monthly rates of compensation payable for the period involved. The rates of compensation will be furnished to the retired pay finance center. All issues for the period involved i.e., dependency, must be resolved prior to furnishing compensation rates to the finance center.

(2) **Military Finance Center Action.** Based upon the rates of compensation furnished by the regional office, the finance center will process DD Form 2279, Request for Retroactive Waiver of Military Retired Pay, compute the amount of overpayment and certify to the VA the effective date of retroactive waiver.

(3) **Award Action.** Upon receipt of all necessary information from the finance center, the adjudicator will make an amended award for entry via magnetic diskette for the period involved, show amount of offset in the remarks section of the award, and refer the award with the folder to the Finance activity.

(4) **Finance Action.** The Finance activity will complete a VA Form 4-6694, Fiscal Transaction Code Sheet, using transaction code 04E with deduction code 63C, which must be processed in the same batch as the award. Collection code 2 will be entered in item 14 of VA Form 21-6798, Disability Award, and amount will be left blank.

SUBCHAPTER VI. WAIVER OF DISABILITY BENEFITS DURING RESERVE TRAINING DUTY

29.32 CERTIFICATES OF WAIVER SUBMITTED PRIOR TO RESERVE TRAINING

Disability benefits cannot legally be paid concurrently with active or inactive duty training pay. (38 U.S.C. 3104(c)) For those veterans desiring to receive service pay, arrangements have been made with the various service departments, including the National Guard Bureau, for submission of [VA Form 21-8951, Declaration of Benefits Received and Waivers,] *at the commencement of each fiscal year* for that specific fiscal year or at the time a reservist joins a unit for the balance of that particular fiscal year.

[a. **Annual Solicitation of Waiver by VA.** At the commencement of each fiscal year the Hines DPC will release VA Form 21-8951 for a compensation record in which the master record reservist indicator shows that the veteran is currently a reservist or member of a National Guard unit.

b.] **Current Year.** [VA Form 21-8951] will contain a waiver of payment of payment of disability compensation, pension or retirement pay for the maximum permitted paid attendance for active or inactive duty training during the fiscal year for which submitted.

[c.] **Prior Periods.** [VA Form 21-8951] may be accepted for a retroactive period and payments will be reduced as provided in paragraphs 29.34 and 29.35. (38 CFR 3.700(a)(1))

29.33 NUMBER OF DAYS OF VA BENEFITS TO BE WAIVED

a. **General.** The U.S. Army Reserves and National Guard project their waivers on the basis of the maximum permitted paid attendance. This normally consists of 48 armory drills or training sessions and 15 days active duty training; however, waivers from reservists made in accordance with their respective regulations will be accepted.

(1) Reserve components should be reporting the number of days during the fiscal year for which the reservists are to receive drill pay as 1 full day's duty pay for each 4-hour training assembly which they attend. Therefore, it is possible that on a "drill weekend" a reservist could receive 4 day's drill pay as he/she would be credited with attending two drill assemblies each day.

(2) Care must be exercised when processing drill pay waivers that the number of days' pay is being reported rather than the number of calendar days on which drill attendance occurred. Clarification will be requested from the reserve component if questions arise as to their method of reporting.

(3) A reservist receives only 1 day's pay for each day of the 2-week annual active duty training period (summer camp) which he/she attends, and this period is not to be confused with the drill weekends.

EXAMPLE: Certification received from the reserve unit that, during the coming fiscal year, Sgt. John Doe will attend drill on 24 days (this is generally two sessions each day) and also have 15 days of active duty training. Since Sgt. Doe will be credited with 2 days' pay each full drill day, he would be charged with 48 days for waiver purposes plus the 15 days of summer camp resulting in 63 days' compensation being waived.

b. **No-Pay Status.** When reservists are in a no-pay status for all of their inactive duty training and are paid only for active duty training at summer camp or equivalent, *the number of paid days* served will be used for a no-pay period as provided by paragraph 29.35.

c. **Traveltime.** In computing the number of days VA benefits must be waived, it is necessary to include any authorized traveltime for which *service pay and allowance are paid*. Therefore, when a reservist is ordered to active duty for training with orders authorizing traveltime without specifying the number of travel days allowed, it will be necessary to request verification from the appropriate service by VA Form 00-3101, Request For Information.

29.34 ADJUDICATION ACTION UPON RECEIPT OF WAIVER

a. **General.** Upon receipt of the executed waiver, award action will be taken to provide a no-rate period *prospectively*

in accordance with paragraph 29.35, for the entire number of days waived, effective the first day of the month following approval of the award.

(1) The award must show change reason code 19, "Veteran in receipt of active duty pay," for both award lines reflecting the beginning and ending of the no-rate period. [Any award line between the beginning and ending dates of the no-rate period must also show change reason code 19.]

(2) The number of days to be waived must be entered on screen 401, Special Conditions. (See par. 15.23b(3).) This will set the master record reservist indicator to show a current waiver has been processed. Failure to do so will result in the case being identified during the annual VA/DOD/DOT reconciliation as one in which waiver has not been filed by the reservist or National Guard member. In addition, the service department will be able to verify the correctness of the number of days waived. The service department will take appropriate action for any case in which a waiver has not been filed or if a waiver has been filed, but the number of days waived is incorrect.

b. **Cases Involving Temporary Increases.** When, at the time of receipt of waiver for inactive duty training, the veteran is entitled to a 100 percent rate as a temporary increase (par. 29 or 30 of the rating schedule), award action for the establishment of the no-rate period will be prospective, to insure that recoupment for the number of days waived will be at the permanent rate.

c. **Cases Involving Change in Rates.** When a veteran submits a waiver for prior active or inactive duty training and there has been a subsequent increase in his rate of compensation, pension or retirement pay, award action will provide for withholding of the prior permanent rate and payment of the differential. [Retroactive waivers are withheld at the prior permanent rate at the end of the respective fiscal year.

EXAMPLE 1: A waiver of 55 days is received and adjudicated in October 1985 for fiscal year 1985. Using a 10 percent disabled, Vietnam era veteran, the 403 award screen would show the following:

403 Screen

DATE	RSN	RATE	EC	DISAB	DEPEN	S	H	INC	SLC	WITHHOLD	DED-OFFSET
11-01-85	19	0000.00	71	10	00/00	0	0			0066.00	
12-01-85	19	0002.00	71	10	00/00	0	0			0066.00	
12-26-85	19	0068.00	71	10	00/00	0	0				

EXAMPLE 2: Using the same facts as in example 1, except the waiver is for the current fiscal year (1986), the 403 award screen would show the following:

403 Screen

DATE	RSN	RATE	EC	DISAB	DEPEN	S	H	INC	SLC	WITHHOLD	DED-OFFSET
11-01-85	19	0000.00	71	10	00/00	0	0				
12-26-85	19	0068.00	71	10	00/00	0	0				

EXAMPLE 3: A waiver of 63 days is received and adjudicated in January 1986 for fiscal year 1985. The Vietnam era veteran was evaluated as 10 percent disabled during fiscal year 1985, however, the evaluation was increased to 30 percent effective December 1, 1985. The 403 screen would show the following:

403 Screen

DATE	RSN	RATE	EC	DISAB	DEPEN	S	H	INC	SLC	WITHHOLD	DED-OFFSET
02-01-86	19	0125.00	71	30	00/00	0	0			0066.00	
04-04-86	19	0191.00	71	30	00/00	0	0				]

29.35 COMPUTATION OF NO-RATE PERIOD ON AWARD

VA benefits must be waived for the total number of days for which active and inactive duty training pay is to be received. The computation of VA payments is based upon a standard 30-day month; the 31st of any month is not counted. When the no-rate period extends through the month of February, that month will be counted as 30 days.

EXAMPLE 1: A waiver of 55 days is received and adjudicated in December. The award base upon this waiver would show "No Rate" from January 1 through February 25.

EXAMPLE 2: For a waiver of 55 days received in December but adjudicated in January, the award would show "No Rate" from February 1 through March 25.

29.36 FORM OF WAIVER CERTIFICATE

VA Form 21-8951, Declaration of Benefits Received and Waivers, is to be used in filing a certificate of waiver. No other form shall be accepted. The form must be signed by the veteran and certified by his/her unit commander or designated representative.

29.37 RECOVERY BY VETERAN OF EXCESSIVE WAIVER

A veteran may recover from the VA payments of disability compensation or pension for those days which were waived, but for which the veteran *did not receive service pay* subject to the 1-year limitation contained in 38 CFR 3.654(c). To apply for reimbursement of excessively waived benefits, the veteran must complete section III of VA Form 21-8951, and have the form signed by his/her unit commander or designated representative.

29.38 ACTION ON APPLICATION FOR REIMBURSEMENT

Reimbursement for the days for which the reservist did not receive payment for reserve duty training will be made by award action after proper certification has been received. The award will show the same starting date of the no-rate period as in the award of reduction previously made. The commencing date of payments following the no-rate period will be changed so that the new award will reflect accurately the exact number of days for which payment was received in accordance with the provisions of paragraphs 29.34 and 29.35.

NOTE: The computation will be based on the number of drill periods for which a day's pay was received regardless of number of calendar days on which drill duty was performed.

EXAMPLE: Certificate of waiver was filed for 55 days. The award was adjusted to provide a "No-rate" period of 55 days. At the end of the year a claim is filed for reimbursement for excess waiver of 20 days on the basis of 15 days active duty for training and 40 periods of drill duty performed on 20 calendar days. Since *payments of training duty pay was made for 55 days,* no adjustment of the award will be in order and the application will be disapproved.

29.39 EXTENDED ACTIVE DUTY

a. Termination of Benefits

(1) General. Veterans receiving VA disability pension, compensation or retirement pay will be required to relinquish such benefits at the time or reentrance into active service.

(2) Notification From Veteran. Written notification from the veteran through his commanding office to the VA or other authentic evidence will be accepted to establish the date of entry into active service.

(3) Notification From Other Than the Veteran. If information is received from other than the veteran, the date of reentry into active service will be established by use of VA Form 00-3101.

(4) Date of Reentry Established. Once the date of reentrance is established, appropriate action will be taken to stop

benefits (using reason code 19), effective the date of reentry into service, unless an amended award action is otherwise required. For VA employee-veterans, see paragraph 21.06e.

b. **Disposition of Claims Pending at Time of Reentry.** When a veteran has a claim for disability compensation pending at the time of reentrance, the claim should [not] be disallowed solely for the reason that the veteran reentered active service. Instead, if available evidence is adequate, the claim should be adjudicated and any benefits payable for a period prior to the active duty should be awarded to the date the veteran reentered active service.

c. **Resumption of Payments Upon Release From Active Duty**

(1) **DD Form 214 Received.** When DD Form 214, Certificate of Release or Discharge From Active Duty, or other authentic evidence is received showing the veteran has been released, the case will be reviewed to insure that payments were properly discontinued effective the date of veteran's reentrance into active service.

(2) **Notify Veteran.** It is proper to notify the veteran that payments may be resumed upon receipt of a reopened claim.

(3) **Application Received.** When application for resumption of benefits is received complete records covering the last period of service should be obtained by submission of VA Form 00-3101 to the proper service department and a current rating decision made. Payments, if otherwise in order, will be resumed as provided in 38 CFR 3.654, bearing in mind the 1-year limitation.

(Through condensation of material, next page is 29-27.)

SUBCHAPTER VII. RECOUPMENT OF READJUSTMENT AND DISABILITY SEVERANCE PAY

29.40 PROHIBITION AGAINST DUPLICATION OF BENEFITS

When it is ascertained (pars. 21.10 and 21.11) that a veteran received lump-sum readjustment pay, disability severance pay or separation pay under 10 U.S.C. 1174, the prohibition against duplication of benefits in 38 CFR 3.700 must be observed.

a. **Compensation**

(1) **Readjustment Pay [Awarded Under 10 U.S.C. 3814(a).** Readjustment pay under 10 U.S.C. 3814(a) was paid to regular officers below the grade of major discharged during a reduction in force. The authority for these payments expired at the end of 1977. If the veteran received readjustment pay under 10 U.S.C. 3814(a), the date of entitlement to VA compensation determines whether recoupment of readjustment pay is required. Recoup the total amount of the readjustment pay awarded if entitlement to VA compensation was established on or after September 15, 1981. No recoupment is required if entitlement to VA compensation was established before September 15, 1981. 38 CFR 3.700(a)(2)(ii), (iii)

(2) **Readjustment Pay Awarded Under 10 U.S.C. 687.** Readjustment pay under 10 U.S.C. 687 was paid to Reserve officers below the grade of major who were involuntarily released after completing at least 5 years of active duty and who did not qualify for retirement. The authority for paying readjustment pay under 10 U.S.C. 687 was repealed effective September 15, 1981. Recoupment of VA compensation is always required if the veteran received readjustment pay under 10 U.S.C. 687. The date of entitlement to VA compensation determines the amount to be recouped. Recoup 75 percent of the readjustment pay when entitlement to VA compensation was established before September 15, 1981, and the total amount of the readjustment pay when entitlement to VA compensation was established on or after September 15, 1981. 38 CFR 3.700(a)(2)(i)

(3) **Separation Pay Awarded Under 10 U.S.C. 1174.** Separation pay under 10 U.S.C. 1174 replaced readjustment pay effective September 15, 1981. It is paid to regular and Reserve officers who are involuntarily discharged after completing at least 5 years of active duty but who do not qualify for retirement. Recoup the full amount of separation pay received under 10 U.S.C. 1174. The amount of separation pay received under 10 U.S.C. 1174 will be annotated on the DD Form 214. 38 CFR 3.700(a)(5)

NOTE. If the veteran established entitlement to VA compensation on or after September 15, 1981, the full amount of readjustment or separation pay must always be recouped.

(4) **Disability Severance Pay.** Recoup the full amount of disability severance pay received for the same disability or disabilities, at a rate not in excess of the current rate of compensation payable for the initial compensable evaluation assigned thereto. 38 CFR 3.700(a)(3)

(5) **Non-Disability Severance Pay.** Non-disability severance pay (also known as severance pay under 10 U.S.C. 3786) is not subject to recoupment. See paragraph 21.10b.

(6) **Separation or Readjustment Pay Recouped by Both VA and Service Department.** A veteran who received separation or readjustment pay may, subsequent to receipt of the benefit, become entitled to retired pay. In this event, the separation or readjustment pay is recouped from the veteran's retired pay. Therefore, if VA previously recouped any amount of separation or readjustment pay which is also subject to recoupment from service retired pay, ask the Service Department if it is recouping the separation or readjustment pay. If it is being recouped, adjust the veteran's compensation award to repay any amounts previously recouped by VA which are now being recouped from service retired pay.

NOTE. Recoupment of readjustment or separation pay is not required when compensation is paid for disabilities attributable to a period of service subsequent to that during which the veteran received readjustment or separation pay. See paragraph 29.42a(2).

b. **Pension.** There is no requirement to recoup readjustment pay, disability severance pay, or separation pay under 10 U.S.C. 1174 from VA pension benefits. However, this benefit is countable income if received after the date of entitlement to VA pension.]

29.41 DETERMINATION OF TOTAL AMOUNT OR BALANCE TO BE RECOUPED

[If the amount of the readjustment pay, disability severance pay or separation pay under 10 U.S.C. 1174 cannot be ascertained from the evidence of record (including DD Form 214) send VA Form 21-3101]. When an award, made subject to a withholding for such recoupment, is terminated, VA Form 20-6560, Notice of Benefit Payment Transaction, is automatically issued furnishing, among other things, the balance still to be recovered.

29.42 DETERMINATION OF MONTHLY WITHHOLDING AMOUNT

[Determine monthly withholding amounts] in accordance with the provisions of this paragraph. Awards which have been approved providing for offset or recoupment under former rules will not be disturbed solely by reason of these provisions. Adjustments to change the method of offset or recoupment may be authorized prospectively from date of last payment at the request of the veteran or accredited representative.

NOTE: Any account having a total offset or recoupment of VA benefits because of receipt of readjustment pay, disability severance pay, separation pay under 10 U.S.C. 1174, or disability benefits under 38 U.S.C. 351 is not subject to apportionment until offset or recoupment has been completed.

a. Readjustment Pay or Separation Pay Under 10 U.S.C. 1174

(1) No Subsequent Service. When entitlement to disability compensation is based solely on service prior to receipt of readjustment pay or separation pay under 10 U.S.C. 1174 [and recoupment is required under 38 CFR 3.700, withhold] the full amount of compensation, including additional amounts for dependents and special monthly compensation, but not medal of honor pension, until an amount equal to 75 percent of the readjustment pay [under 10 U.S.C. 687], or the full amount of [readjustment pay under 10 U.S.C. 3814(a) or] separation pay under 10 U.S.C. 1174 has been recouped.

(2) Disabilities Based on Prior and Subsequent Service. When there are combined disabilities with one or more attributed to service prior to receipt of readjustment pay or separation pay under 10 U.S.C. 1174 and one or more attributable to subsequent service, the compensation payable for service-connected disability(ies) resulting from a subsequent period of service will not be reduced for the purpose of offsetting readjustment [or separation pay.

EXAMPLE: When the disability attributable to the period of service of which [ ] separation pay under 10 U.S.C. 1174 was received is evaluated as 30 percent disabling, and another disability attributable to a subsequent period is 20 percent disabling, combining at 40 percent, the amount paid the veteran will be the amount payable for the 20 percent disability, and the remainder will be withheld until an amount equal to [ ] the full amount of separation pay under 10 U.S.C. 1174 received has been recouped.

b. Disability Severance Pay

(1) Original Awards. Recoupment will be at a rate not in excess of the rate payable for the severance disability(ies) as initially evaluated, even if this evaluation is the result of a convalescent or temporary rating (par. 29 or 30 of the rating schedule). However, the veteran must receive the full amount of monthly compensation, including additional amounts for dependents, payable for any additional nonseverance pay disability(ies).

(a) Severance Pay Disability(ies) Only. The full amount of monthly compensation, including amounts for dependents and special monthly compensation will be withheld.

(b) Severance and Nonseverance Pay Disabilities. Generally, the amount payable to be withheld for recoupment will be the monthly compensation (including amounts for dependents) payable for the severance disability(ies) and the balance will be paid to the veteran; however, if this would result in payment to the veteran at a rate less than the full amount of monthly compensation (including additional amounts for dependents) payable for nonseverance disability(ies), then only the balance remaining after payment of the amount for the nonseverance disability(ies) will be withheld.

EXAMPLE NO. 1: Married veteran, with a 50 percent disability, awarded disability severance pay, also has a 100 percent evaluation for an additional (nonseverance pay) disability. [Do not recoup] severance pay while the nonseverance disability is rated 100 percent disabling.

EXAMPLE NO. 2: Married veteran has a 50 percent severance disability, and a 40 percent nonseverance disability, combining to 70 percent

Method No. 1		**Method No. 2**	
Total 70% rate	[$774]	Total 70% rate	[$774]
Recoup 50% rate plus additional for dependent	[$492]	Pay 40% plus additional for dependent	[$350]
Pay	[$282]	Recoup	[$424]

Method No. 2 would be used in this case.

(2) **Changes in Evaluations**

(a) **Increased Evaluation**

1. When the only disability (ies) is that for which disability severance pay was awarded and the evaluation is increased, the amount to be withheld for recoupment of severance pay disability (ies) must not exceed the rate which would be payable based on the initial compensable evaluation of such disability (ies) (other than for a convalescent or temporary rating; that is, when the initial evaluation was a convalescent or temporary rating, the subsequent assigned schedular evaluation becomes the initial compensation evaluation. Accordingly, only legislative increases or those due to addition of dependents could require an increase in the amount to be withheld, since the "current" rates payable are applicable.

2. When there are two or more severance pay disabilities, the initial and current combined degrees of such disabilities are the evaluations which must be compared. If the combined degree of the severance pay disabilities at the initial evaluation is less than the current combined degree of those disabilities, the initial combined degree will be used under the foregoing examples to establish the amount to be withheld. In such cases, no attempt will be made to compare the initial and current levels of each individual severance pay disability.

Example 1.

INITIAL	CURRENT
Disability A 20	Disability A 10
Disability B 10	Disability B 30
Disability C 10	Disability C 0
Combined 40	Combined 40

Evaluation of the severance disabilities would be at the 40 percent rate.

Example 2.

INITIAL	CURRENT
Disability A 20	Disability A 10
Disability B 10	Disability B 30
Disability C 10	Disability C 20
Combined 40	Combined 50

Evaluation of the severance disabilities would be at the 40 percent rate.

NOTE: If a case is routinely encountered in which an amount is being withheld in excess of the rate which would be recouped under this paragraph, [reduce the withholding] prospectively as of the first of the month following the month in which the amended award is approved.

(b) **Decreased Evaluation.** When the evaluation of the severance pay disability(ies) is decreased, the amount to be used for computation of recoupment will be the rate payable for the severance pay disability(ies) at the new evaluation(s). *NOTE: In all cases, the veteran must receive the full amount payable for any nonseverance disabilities.*

29.43 PREPARATION OF AWARDS

Original and reopened awards subject to recoupment of readjustment, separation and disability severance pay will be made effective as of the date eligibility to compensation is established. If the award is already running when you initiate recoupment, start withholding effective date of last payment, regardless of the date readjustment, separation, or disability severance pay was received.

a. **Award Data.** Computations of amounts to be paid and recouped will be made, as required, for each award line to provide for all periods of entitlement. Continuous withholding for future rate changes, if any, will be shown without any attempt to compute or reflect the future date on which the total amount will be recouped. The computer will maintain a running balance and automatically adjust to pay the full entitled rate when recoupment is completed. (See also par. [15.34 re withholdings].)

(1) **Withholding Data.** The applicable type withholding code (8 for readjustment or separation pay; 9 for disability severance pay) and the monthly amount to be withheld will be entered in accordance with paragraph [15.43]. There is no need to prospectively zero out the applicable withholding code.

(2) **Monthly Rate.** If, for any period, the total amount payable is to be withheld, enter "None" in the "Monthly Rate" column for that award line; otherwise, enter the difference between "Total Award" and the amount to be withheld.

b. **Total Amount or Balance To Be Recouped.** [Refer to paragraph 29.40 to determine the amount of readjustment, separation, or disability severance pay to be recouped. The BIRLS MSC screen has fields for DISABILITY SEVERANCE PAY, LUMPSUM READJUSTMENT PAY, and SEPARATION PAY. If there is an entry in one of these fields on the MSC screen and a pending issue file is established, the 401 screen will display 100 percent of the amount in the DISABILITY SEVERANCE PAY or SEPARATION PAY fields on the MSC screen. The 401 screen will display 75 percent of the amount entered in the LUMPSUM READJUSTMENT field on the MSC screen. If you enter an amount in the DISAB SEV, READJUST, or SEPARATION fields on the 401 screen, 100 percent of the amount entered will be displayed and recouped by the system.

NOTE: If the veteran received readjustment pay and date of entitlement to VA compensation was on or after September 15, 1981, 100 percent of the readjustment pay must be recouped (par. 29.40a). Therefore, enter the amount of readjustment pay received in the SEPARATION PAY field on the MSC screen. This will generate a 100 percent withholding balance on the 401 screen. Use the READJUSTMENT PAY field on the MSC screen ONLY when the veteran received readjustment pay under 10 U.S.C. 687 and the date of entitlement to VA compensation was before September 15, 1981. If readjustment pay which must be recouped at the 100 percent rate was erroneously entered in the READJUSTMENT PAY field on the MSC screen so that it generated a 75 percent recoupment balance on the 401 screen, it is also possible to correct the recoupment balance by changing the amount on the 401 screen. However, see subparagraph c below if there is already a recoupment balance in the master record.]

EXAMPLE: [$10,000 is entered in the LUMPSUM READJUSTMENT field on the BIRLS MSC screen and a pending issue file is subsequently established. $7,500 will appear in the READJUST field on the 401 screen. If the award is generated, the system will recoup disability compensation until $7,500 is withheld. However, if it is determined before the award is generated that all $10,000 should be recouped (because the date of entitlement to disability compensation was on or after September 15, 1981), change the amount in the READJUST field on the 401 screen to $10,000. The system will then recoup disability compensation of $10,000.]

c. **Change in Amount or Balance To Be Recouped.** Once an amount or balance to be recouped has been established [in the master record] it will NOT be entered on amended awards. If an adjustment in the balance to be recouped is required, such adjustment will be made by the Finance activity before amended award action. Send OF 41 to Finance requesting that the recoupment balance be changed.

d. **Amended Awards**

(1) **Future Increases or Decreases.** Future increases or decreases in the total award and/or amounts to be withheld or paid will be accomplished by amended awards prepared and processed in the usual manner for any account involving withholdings.

(2) **Retroactive Adjustments.** Retroactive adjustments will also be handled in the usual manner, subject to the following:

(a) **Net Prior Award Entries.** When there is an existing balance to be recouped, net prior award entries for each retroactive period will be made to reflect the monthly rate, effective date and withholding type and amount of recoupment for each period covered by the amended award. The master record recoupment will then be automatically increased or decreased as required. (par. [15.36b(2)]

(b) **Recoupment Liquidated.** When the total amount for recoupment has been liquidated and eliminated from the master record, all subsequent award actions, including retroactive adjustments will be prepared in gross amounts with no input to reflect that the case previously involved a recoupment.

(c) **Recoupment Balance Reinstated.** In the unusual case in which a recoupment balance is to be reinstated subject to withholdings, no attempt will be made to "adjust" prior award data since all master record data as to prior recoupment balance and withholding will have been eliminated. The new balance (total amount to be recouped minus amount previously recouped) will be introduced by entry in the "Recoupment

Balance" item on the amended award prepared with appropriate withholding as in the case of a reopened award. [(See par. 29.436.)]

[ ]

29.44 APPORTIONMENTS

See paragraph 26.09.

29.45 EFFECT OF REDUCTION OR TERMINATION

a. **On Reexamination.** When the disabilities are subject to reexamination and are thereupon found to have decreased in evaluation, the provisions of [38 CFR 3.105(e)] are applicable, since this is a running award even though the total amount of disability compensation is being withheld to amortize readjustment or disability severance pay.

b. **Termination Before Recoupment.** Should the award of disability compensation subject to recoupment be discontinued or terminated for any reason (including failure to report for examination), except the veteran's death before the recoupment of the total pay, such amount not recouped will remain as a charge against and subject to recovery from any future award of disability compensation in the same manner as provided in [paragraph 29.43a.]

29.46 NOTICE TO THE PAYEE

a. **VA Informs Payee.** [Fully inform the payee] as to the total amount of the award, the recoupment required and the net monthly rate, if any, to be received.

b. **Payee to Inform VA.** In any case when compensation is awarded but payments will not be received until disability severance pay or lump-sum readjustment payment is recouped, [inform] the veteran or fiduciary [ ] that although he or she will not receive any payments until the amount has been recouped it is necessary that [ ] VA be kept informed of his/her changes of address at all times. This is required because if he or she should fail to report for a scheduled physical examination or furnish evidence when requested, it would be necessary to discontinue compensation which could result in a delay or failure to receive monetary benefits from [ ] VA in the future.

29.47 PREVIOUSLY DISALLOWED CLAIMS OF READJUSTMENT PAY

a. **General.** [If] a case is encountered in which a claim was previously disallowed under the laws then in effect because the veteran elected to receive a lump-sum readjustment payment, [advise] the claimant [ ] of the conditions under which disability benefits can now be paid.

b. **New Claim Received.** Upon receipt of a claim, compensation may be awarded subject to the basic rules governing the commencing date as related to the date of receipt of such claim (formal or informal). The award will be subject to recoupment of 75 percent of the readjustment pay which the veteran previously received as provided above.

29.48 SEVERANCE PAY [(10 U.S.C. 3786)] NOT SUBJECT TO RECOUPMENT

[Severance pay awarded under 10 U.S.C. 3786 (Pub. L. 86-155) is a lump-sum payment to members of the regular establishment who are separated usually due to their failure to qualify for promotion. There is no provision in the law requiring refund of severance pay awarded under this section. This provision of title 10 was repealed by Public Law 96-513, effective September 15, 1981. Any individual separated after that date who would have been entitled to severance pay under 10 U.S.C. 3786 will receive separation pay under 10 U.S.C. 1174 which is subject to recoupment. (See par. 29.40a(2).)]

SUBCHAPTER VIII. DISABILITY COMPENSATION UNDER 38 U.S.C. 351

29.49 GENERAL INFORMATION

a. If a veteran is injured as a result of hospitalization or medical treatment furnished by VA or if the veteran is injured while pursuing a course of vocational rehabilitation under any VA administered law, the veteran is entitled to disability compensation as if the injury were service-connected. (38 U.S.C. 351; 38 CFR 3.800)

b. Compensation is not payable under 38 U.S.C. 351 if the injury was due to the veteran's own willful misconduct. (38 CFR 3.1(n); 3.800(a))

c. If compensation is granted for a disability under 38 U.S.C. 351, the disability is not "service-connected." However, compensation is payable "as if it were service-connected." The distinction is that a veteran receiving compensation solely under 38 U.S.C. 351 is not entitled to all ancillary benefits that are payable to veterans with service-connected disabilities. (See par. 29.59.)

d. If compensation is granted for loss or loss of use of an organ or extremity under 38 U.S.C. 351 and loss or loss of use of the paired organ or extremity is involved which is neither service-connected nor quasi-service-connected under 38 U.S.C. 351, 38 U.S.C. 360 requires that the evaluations of the paired organs or extremities be combined as if both were service-connected (see par. 29.60d).

29.50 CLAIMS REQUIREMENTS

a. The veteran need only submit a statement showing an intent to apply for compensation under 38 U.S.C. 351. There is no requirement for submission of VA Form 21-526. A formal claim, however, for compensation or pension is a claim for compensation under 38 U.S.C. 351. (38 CFR 3.154)

b. The effective date of entitlement to compensation for a 38 U.S.C. 351 disability is not necessarily the same as the date of claim when the specific issue was initially raised. If compensation for a disability was previously established under other provisions and entitlement under 38 U.S.C. 351 is ultimately established for the same disability, the effective date for the 38 U.S.C. 351 disability is either the date of claim of the original application (if received within 1 year of incident) or the date of the incident which resulted in the 38 U.S.C. 351 claim, whichever is later. If, however, the original claim was disallowed for other reasons; e.g., the veteran failed to furnish requested evidence or report for a scheduled examination, the effective date of entitlement to a 38 U.S.C. 351 disability is the date of the reopened claim. (38 CFR 3.400(i))

29.51 DEVELOPMENT OF 38 U.S.C. 351 CLAIMS

a. **Referral to Rating Board.** Refer claims for compensation under 38 U.S.C. 351 to the rating board for review prior to initiating any development. The purpose of the initial rating board review is to determine whether the issue can be resolved without further development. If development is required, the rating board shall indicate specific types of evidence to be requested.

b. **Requests for Information.** Usually VA Form 10-7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action, does not provide sufficient space for details surrounding the incident; therefore, request information by dictated letter from the medical facility. Furnish as much information as possible about the incident in the request. If the rating board does not specify the types of evidence to request, request all evidence and documents pertinent to the incident upon which the claim is based. Possible sources of information about the incident include the following:

(1) Medical records

(2) Surgical records

(3) Hospital clinical records

(4) Nurses' notes

(5) VA Form 10-2633, Report of Special Incident Involving a Beneficiary, or other documentation of patient injury.

NOTE: Do not request quality assurance investigative reports. These reports are confidential under 38 U.S.C. 3305 and cannot be used as evidence in adjudication of claims under 38 U.S.C. 351. If quality assurance investigative reports are received from a VA medical facility, return the reports immediately. Do not file copies of these reports in the veteran's claims folder where they are subject to review by the veteran under the Privacy Act.

29.52 PROHIBITION AGAINST DUPLICATION OF BENEFITS

a. **General.** If a veteran is injured under circumstances which result in possible entitlement to benefits under 38 U.S.C. 351, the veteran may also seek a judgment against the United States in a civil action. The veteran might sue and recover damages after a trial. More often, the veteran will agree to a settlement or compromise which means the veteran signs away the right to sue in court in return for payment of an agreed amount for damages. The prohibition against duplication of benefits applies whenever the veteran receives a sum of money or property to extinguish a legal claim arising from injury.

b. **Characterization of Tort Claim.** It makes no difference whether the award or settlement amount to the veteran is characterized as a settlement, compromise, administrative award, tort award, or judgment. For the purpose of this subchapter, the term "judgment" encompasses all of the preceding terms.

c. **Offset Required.** The amount received by the veteran from a judgment for a disability entitling to benefits under 38 U.S.C. 351 is subject to offset until such time as an amount equal to the judgment has been recouped from the veteran's compensation. (38 CFR 3.800(a))

NOTE: Offset is not required if the terms of the judgment, settlement, or compromise specifically provide for waiver of offset by VA.

d. **Notice of Action on Tort Claim.** The tort claim against the government will be resolved by General Counsel, the U.S. Attorney General, or District Counsel. The circumstances of the individual case determine which official is responsible for resolving the tort claim. In all cases resolved in favor of the veteran, notice of culmination of the tort claim will be referred to the Adjudication Officer of the regional office having jurisidiction of the claims folder.

e. **Deferral of Award Action.** Disability compensation awards under 38 U.S.C. 351 are subject to offset effective the first of the month after the month during which the judgment becomes final. Therefore, defer a compensation award under 38 U.S.C. 351 if there is reason to believe a tort claim for damages may have been finalized. Do not defer the compensation award just because a tort claim has been filed unless there is reason to believe it has been finalized.

f. **Pension Beneficiaries.** No offset is required if a tort claim is concluded in favor of a veteran in receipt of pension or who is eligible for compensation under 38 U.S.C. 351 but elects to continue to receive pension in lieu of compensation. The net proceeds of the judgment, however, are countable income for pension purposes. (38 CFR 3.262(i); 3.271(g)) Do not adjust a veteran's pension award to count the proceeds of a judgment without affording predetermination notice unless the veteran is the source of information and understands that the judgment will affect the amount of pension payable.

g. **Tort Claims Concluded Before December 1, 1962.** An administrative award or settlement which became final before December 1, 1962, is a bar to all further payments of compensation under 38 U.S.C. 351. However, a court judgment which became final before December 1, 1962, is neither a bar to payment of compensation under 38 U.S.C. 351 nor subject to offset, unless such a bar or offset is provided for by the terms of the judgment. (38 CFR 3.800) If a case is encountered in which payments under 38 U.S.C. 351 were continued despite an administrative award or settlement which became final before December 1, 1962, stop or reduce the awards DLP under 38 CFR 3.500(b)(2). (Adm. Dec. 975)

h. **Entitlement of Other Beneficiaries.** If a judgment is made to or for two or more persons, which involves a claimant subject to the 38 U.S.C. 351 offset, ascertain the individual distribution of the monies.

(1) The specific amount received by each individual, as distinguished from the technical or legal capacity of the person to whom payment is made, is the governing factor. This also applies to a person who has been paid in both an individual and representative capacity, such as a surviving spouse who receives a settlement payment as well as fees for administering the veteran's estate.

(2) If the claims folder is in Central Office under review, General Counsel will determine the distribution.

(3) If the claims folder is in the regional office when the question of distribution arises, the Adjudication Officer will request the District Counsel to ascertain the individual distribution of the judgment award or of the settlement or compromise payment. Forward the claims folder with the request.

i. **Death Claims.** See chapter 33 for adjudication of death claims involving 38 U.S.C. 351.

29.53 EFFECTIVE DATE OF OFFSET

a. **General.** Where withholding is required under 38 U.S.C. 351, make the offset effective the first of the month after the month during which the judgment becomes final. If, however, the terms of the judgment specifically provide for a different date of offset, the terms of the judgment control.

(1) **Administrative Awards.** Administrative awards made by VA are considered final on the date of approval.

(2) **Attorney General Agreements.** A settlement or compromise entered into by the Attorney General after suit has been filed is considered final when the agreement is approved by the court, notwithstanding that a final order of dismissal may not be entered until a later date.

(3) **Finalization Date Uncertain.** If after reviewing the evidence of record, there is any question as to the date the judgment became final, request clarification from the District Counsel.

b. **Retroactive Adjustments.** Do not offset compensation payable for any period before the month following the date on which the judgment becomes final. Action to adjust a 38 U.S.C. 351 award for receipt of a judgment creates a 97K recoupment balance in the C&P master record. If final notice of a judgment is received after a compensation award under 38 U.S.C. 351 is already running, VA must offset retroactive to the first of the month following the month of the judgment. This retroactive adjustment to prevent duplication of benefits will create a 30B accounts receivable in the C&P master record in addition to the 97K recoupment balance; however, the 97K recoupment balance will be reduced by the amount of the 30B accounts receivable. After processing the retroactive award, the sum of the 97K recoupment balance and the 30B accounts receivable should equal the amount of the judgment.

EXAMPLE: A judgment is final on June 15, 1987. The rating board later grants compensation effective March 16, 1987, under 38 U.S.C. 351. Do not offset any portion of the veteran's compensation benefits prior to July 1, 1987, the month following the date the judgment became final.

29.54 AMOUNT OF OFFSET

a. **General.** The amount of the offset must not deprive a veteran of any part of the compensation payable to him/her if a claim under 38 U.S.C. 351 had not been filed. This is the underlying principle to apply in determining the 351-offset amount.

b. **No Other Disability.** Offset the full amount of compensation under 38 U.S.C. 351 if the veteran has no non-351 service-connected disabilities.

c. **Increased Evaluation.** Determine the compensation for all disabilities (351 and non-351 disabilities). Next determine the compensation for non-351 disabilities. Offset the difference.

d. **Combined Evaluation Unchanged.** Do not offset any amount if the 38 U.S.C. 351 disability does not increase the total amount of compensation. If VA established an offset, discontinue it if there is an increase in the evaluation of a non-351 disability such that the 38 U.S.C. 351 disability no longer increases the total amount of compensation.

EXAMPLE: A veteran has two non-351 service-connected disabilities each evaluated at 60 percent and a 351 disability evaluated at 30 percent. Combined evaluation is 90 percent and for the non-351 disabilities the combined evaluation is 80 percent. Per subparagraph c, VA offset the difference between the 90 percent rate and the 80 percent rate. Subsequently, VA increases one of the 60 percent evaluations to 70 percent. Now the combined evaluation of all disabilities has not changed (still 90 percent) but the combined evaluation of the non-351 disabilities is increased to 90 percent. Therefore, discontinue the offset. In the reverse situation (the 70 reduced to 60), commence the offset.

29.55 OFFSET NOT APPLICABLE

The offset provisions are applicable if compensation for a disability is payable *solely* under 38 U.S.C. 351. If compensation is otherwise payable for a disability, no offset is required even if the veteran is compensated under 38 U.S.C. 351 for that disability.

EXAMPLE 1: A veteran is rated 10 percent disabled due to a service-connected foot disability. The veteran enters a VA medical center for treatment of the disability. The evaluation is increased to 30 percent disabling due to the negligence of the hospital. The veteran sues the hospital and recovers. No offset is required because the foot disability is service connected without regard to 38 U.S.C. 351.

EXAMPLE 2: A veteran is service connected for a severe pulmonary condition which requires the administration of significant doses of steroids. The veteran later develops cataracts and claims that the cataracts are due to the steroid treatments. The veteran files a compensation claim under 38 U.S.C. 351. The rating board should consider whether the cataracts are proximately due to or the result of a service-connected disability so that the condition can be service connected under 38 CFR 3.310. If the rating board does grant service connection for cataracts under 38 CFR 3.310, then no offset is required.

29.56 PREPARATION OF AWARDS

The instructions in paragraph 29.43 concerning preparation of awards involving readjustment and disability severance pay generally apply to preparation of awards under 38 U.S.C. 351. The following provisions apply specifically to 38 U.S.C. 351 awards:

a. **Entitlement Code.** If there are service-connected disabilities for which compensation is payable without regard to 38 U.S.C. 351, use the appropriate entitlement code for the service-connected disabilities. Otherwise, use the peacetime code. (See par. 15.30.)

b. **Special Law Code.** Enter special law code 07 in the SLC field on the 401 screen if compensation is granted or increased because of 38 U.S.C. 351. Use special law code 07 whether or not offset is required. (See par. 15.32.)

c. **Withholding for Offset.** Enter the amount of offset as a type 7 withholding in the DED-OFFST field on the 403 screen. (See par. 15.34b.)

d. **Total Amount to be Recouped.** Enter the gross amount of the judgment in the TORT AWARDS field on the 401 screen. The maximum amount that can be entered in the TORT AWARDS field is $999,999.99. If the tort award is $1,000,000 or more, enter "$999,999.99" on the 401 screen and refer to the file to Finance for entry of the remaining recoupment balance. Maintain close control to ensure the master record recoupment balance is correct after the Finance transaction has been processed.

e. **Changes in Recoupment Amount.** Once a recoupment balance has been established in the master record, it cannot be changed by amended award action. If the recoupment balance must be changed, document the claims folder and send a routing slip to Finance requesting that the recoupment balance be changed. Maintain close control of the case to verify that the change was properly posted to the master record.

29.57 NOTICE OF AWARD

a. **Dictated Letter Required.** The presence of special law code 07 in the award automatically suppresses the Target award letter. Therefore, prepare a dictated letter but do not refer to the award as arising out of 38 U.S.C. 351 unless there was a specific claim thereunder. State in the dictated letter that the veteran is entitled only to disability compensation and that there is no independent entitlement to ancillary benefits (unless there is entitlement to ancillary benefits based on disabilities which are service-connected without regard to 38 U.S.C. 351). (See par. 29.59.)

b. **Notice of Offset Requirement.** If the award does not provide for offset, inform the veteran of the offset requirements of the law. Include this information whether or not there is any indication that a tort claim has or will be filed.

c. **Zero Rate Awards.** If a total offset is in effect until an amount equal to the judgment has been recouped, advise the veteran to keep VA informed of any changes of address. (See par. 29.46b.)

29.58 DISALLOWANCES

a. **Preparation of Disallowance.** Prepare a formal disallowance of a 38 U.S.C. 351 claim (when required under par. 16.02) in accordance with paragraph 16.05.

b. **Disallowance Letter.** In the absence of a specific claim for benefits under 38 U.S.C. 351, do not refer to that section or the circumstances which warranted the rating in the disallowance letter. Use the Target disallowance letter if it is otherwise adequate. If there was a specific claim under 38 U.S.C. 351, suppress the Target letter and prepare a dictated disallowance letter.

29.59 ENTITLEMENT TO ANCILLARY BENEFITS

If compensation is granted for a disability under 38 U.S.C. 351, the veteran (if otherwise, eligible) may receive the clothing allowance (see par. 24.17a). However, there is no entitlement to the following ancillary benefits unless the veteran is entitled based on disabilities for which compensation is payable without regard to 38 U.S.C. 351:

a. Dependents' Educational Assistance (par. 10.11).

b. Automobile or Adapted Equipment (par. 30.06).

c. Specially Adapted Housing (par. 30.07).

d. Vocational Rehabilitation (par. 30.10).

e. CHAMPVA–38 U.S.C. 613 (par. 30.12).

SUBCHAPTER IX. DISABILITY COMPENSATION FOR PAIRED ORGANS OR EXTREMITIES (38 U.S.C. 360)

29.60 SPECIAL CONSIDERATION FOR PAIRED ORGANS AND EXTREMITIES.

a. If there is service-connected loss or loss of use of an organ or extremity and nonservice-connected loss or loss of use of the paired organ or extremity, 38 U.S.C. 360 requires that the evaluations of the paired organs or extremities be combined as if both were service connected.

b. The following combinations of paired organs or extremities give rise to special consideration under 38 U.S.C. 360:

(1) Blindess in one eye as a result of service-connected disability and blindness in the other eye as a result of nonservice-connected disability.

(2) Loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of nonservice-connected disability.

(3) Total deafness in one ear as a result of service-connected disability and total deafness in the other ear as a result of nonservice-connected disability.

(4) Loss or loss of use of one hand or one foot as a result of service-connected disability and loss or loss of use of the other hand or foot as a result of nonservice-connected disability.

(5) Permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a nonservice-connected disability of the other lung.

c. Special consideration under 38 U.S.C. 360 is not permitted if the nonservice-connected disability is the result of the veteran's own willful misconduct.

d. If compensation is granted for loss or loss of use of an organ or extremity under 38 U.S.C. 351 and loss or loss of use of the paired organ or extremity is involved which is neither service connected nor quasi-service connected under 38 U.S.C. 351, 38 U.S.C. 360 requires that the evaluations of the paired organs or extremities be combined as if both were service connected.

29.61 PROHIBITION AGAINST DUPLICATION OF BENEFITS

a. **General.** Special consideration under 38 U.S.C. 360 is afforded where a veteran has loss or loss of use of a service-connected organ or extremity and loss or loss of use of a paired nonservice-connected organ or extremity. If the loss or loss of use of the nonservice-connected organ or extremity results from circumstances which could give rise to legal liability, the veteran may seek to recover damages by lawsuit or other means. If the veteran does successfully recover damages, the amount of damages received (based on the nonservice-connected disability only) must be offset against the *ADDITIONAL* benefit payable under 38 U.S.C. 360.

b. **Offset Provisions.** Offset provisions for the paired extremities of hands or feet have been in effect and are continued. Offset provisions for the remaining paired organs or extremities apply only to compensation granted or increased after October 27, 1986.

c. **Social Security and Workers' Compensation.** Benefits received under Social Security or Workers' Compensation are not subject to recoupment even though the benefits may have been awarded pursuant to a judicial proceeding.

d. **Characterization of Award.** With the exception of Social Security and Worker's Compensation, all other recoveries related to the nonservice-connected organ or extremity are subject to recoupment regardless of whether the payment to the veteran is characterized as a tort award, settlement, compromise, administrative award, or judgment. The prohibition against duplication of benefits applies whenever the veteran receives a sum of money or property to extinguish a legal claim arising from injury to the affected nonservice-connected organ or extremity.

e. **Veteran's Duty to Report.** The veteran is required to report to VA any damages received as the result of a lawsuit, compromise, settlement or other recovery involving the nonservice-connected organ or extremity. The veteran should report the total amount of money received. Expenses incident to recovery, such as attorney's fees, may not be deducted from the amount to be reported.

29.62 PREPARATION OF AWARDS

a. **Deferral of Award Action.** Do not defer award action because there is reason to believe a tort claim for damages has been filed based on the injury to the nonservice-connected paired organ or extremity. However, if there is reason to believe that a tort claim for damages has been finalized but the date the veteran recovered damages is not known, defer award action and develop to ascertain the date damages were received by the veteran.

b. **Total Amount to be Recouped.** The total amount to be recouped will be the gross amount of the settlement or judgment. Attorney's fees, court costs, and other expenses incident to the claim are not deductible from the total amount awarded. Enter the gross amount received in the TORT AWARDS field on the 401 screen. The maximum amount that can be entered in the TORT AWARDS field on the 401 screen is $999,999.99. If the tort award is $1,000,000 or more, enter "$999,999.99" on the 401 screen and refer the file to Finance for entry of the remaining recoupment balance. Maintain close control to ensure the master record recoupment balance is correct after the Finance transaction has been processed.

c. **Changes in Amount to be Recouped.** Once a recoupment balance has been established in the master record, it can not be changed by amended award action. If the recoupment balance must be changed, document the claims folder and send a routing slip to Finance requesting that the recoupment balance be changed. Maintain close control of the case to verify that the transaction was properly posted to the master record.

d. **Special Law Code.** Enter special law code 20 in the SLC field on the 401 screen if compensation is granted or increased under 38 U.S.C. 360. Use special law code 20 whether or not offset is required. (See par. 15.32.)

e. **Withholding for Offset.** Enter the amount of offset as a type 7 withholding in the DED-OFFST field on the 403 screen. (See par. 15.34b.)

f. **Monthly Withholding Amount.** Withhold only the additional compensation (including amounts for dependents) payable for the nonservice-connected paired organ or extremity. If this results in payment at a rate less than the combined evaluation of the non-360 service-connected disabilities (including amounts for dependents), however, withhold only the remaining balance payable.

g. **Effective Date of Withholding.** Make the withholding effective the first of the month after the month during which the veteran received damages as a result of injury to the nonservice-connected organ or extremity. If the veteran receives payments in installments, start the withholding the first of the month after the month during which the first installment was received. Do not withhold compensation before October 28, 1986, for any of the four combinations of disabilities as outlined in paragraph 29.61b.

h. **Retroactive Compensation Benefits.** Do not offset compensation payable for any period before the month following the date on which the settlement or judgment becomes final.

EXAMPLE: A judgment for a nonservice-connected extremity is final on June 15, 1987. The rating board later grants special monthly compensation effective March 16, 1987, for the paired extremities under 38 U.S.C. 360. Do not offset any portion of the compensation benefits prior to July 1, 1987, the month following the date the judgment became final.

29.63 NOTICE OF AWARD

The presence of special law code 20 in the award automatically suppresses the Target award letter. Send a dictated letter explaining the basis of the award. Advise the veteran that VA should be informed immediately if the veteran recovers damages from any source because of injury to the nonservice-connected organ or extremity. If offset of benefits is required, explain the requirement for recoupment of an amount equal to the gross amount of any damages received.

29.64 ENTITLEMENT TO ANCILLARY BENEFITS.

If the veteran has a service-connected disability or a quasi-service-connected disability under 38 U.S.C. 351 and if 38 U.S.C. 360 is granted for the paired organ or extremity, the veteran (if otherwise, eligible) may receive the clothing allowance (see par. 24.17a). There is no entitlement to the following ancillary benefits unless the veteran is entitled based on service-connected disabilities for which compensation is payable without regard to 38 U.S.C. 360:

a. Dependents' Educational Assistance (par. 10.11).

b. Automobile or Adapted Equipment (par. 30.06).

c. Specially Adapted Housing (par. 30.07).

d. CHAMPVA–38 U.S.C. 613 (par. 30.12).

Your election of Improved Pension has been received and carefully considered.

Although you would be entitled to Improved Pension of $ _____ (monthly) instead of the $ _____ monthly pension you now receive, we have not taken award action in order to let you consider whether you wish to elect Improved Pension at this time.

Before you decide, it is very important that you know that Public Law 96-272 provides that persons living in (insert applicable State from par. 29.09a) are not required to elect Improved Pension in order to be eligible for public assistance under a State program such as AFDC (Aid to Families With Dependent Children) or for SSI (Supplemental Security Income) benefits because medicaid benefits depend on eligibility to receive public assistance or SSI payments.

This means that as you live in a State where you are not eligible for medicaid unless you are receiving public assistance, you are not required to elect Improved Pension in order to receive public assistance or SSI. Also you cannot be denied public assistance or have those benefits reduced because you do not elect Improved Pension. [However, the law does not apply if you are in a nursing home or other institution and receive medicaid assistance. The medicaid program in any State may require you to elect Improved Pension if it is a greater benefit in order to remain eligible for medicaid.]

You must consider whether an election will cause you to lose other benefits, especially medicaid, before you tell us to take action on your election because elections are final after you have received and cashed the first check.

You should also consider that Improved Pension will be reduced $1 per year for each dollar your income increases in the future from any source, but the monthly pension you are now receiving will continue unchanged unless you lose a dependent, your net worth becomes excessive, or your income exceeds a limit which will increase each year by the same percentage that social security benefits increase.

We will not take any further action on the election you submitted unless you tell us to do so in writing.

You should also know that you can make a new election at any time in the future and we will tell you the amount you would receive and let you decide.

Figure 29-1. Public Law 96-272 Notification of Election of Improved Pension

Field Description	Positions	Data
Blanks	1-3	Blank
Name of Person Entitled	4-7	First 4 positions of surname of person entitled (F.I. 005)
Blanks	8-10	Blank
Veteran's SSN	11-19	F.I. 204
Blank	20	Blank
Branch of Service	21	F.I. 053
Vet SSN Verification Ind.	22	F.I. 048
File Number	23-31	F.I. 002, Straight sequence
Payee Number	32-33	F.I. 003
Station Number	34-35	F.O. 009
Transaction Code	36-37	Numeric, no modifier
Processing Month	38-39	Numeric equivalent
Processing Cycle	40	
Master Record Type	41	F.I. 004
Blank	42	Blank
Amount (Prior)	43-48	From most recent prior—gross award if it is greater than zero, else total of prior net award, prior recoupment and prior PFOP. Blank if no prior
Effective Date (Prior)	49-54	Effective date of above prior amount, or blank.
Amount 1	55-60	Net award amount in current award no withholding or gross amount from segment if withholding or blank
Effective Date 1	61-66	Current award date, or blank
Reason Code 1	67-68	Reason code from current award
Blanks	69-92	Blanks
Active Reservist Ind.	93	F.I. 187
Special Law Code 06/08	94-95	F.I. 043 or F.I. 066 is equal to 06 or 08; otherwise leave blank
Compentency Code	96	F.I. 063 (Payee 00 only)
Special Law 01	97-98	F.I. 043 or 066, if equal to 01; otherwise leave blank
Withholding Indicator	99	One (1) if there is a type 1 withholding, otherwise, leave blank
Pay Grade	100-101	F.I. 090 (payee 10 only)
Payee's SSN	102-110	F.I. 214 (payee 10 only)
Payee SSN Verification Ind.	111	F.I. 046 (payee 10 only)
Veteran's Name	112-115	First 4 positions of surname of veteran (F.I. 084)—payee 10 only
Blanks	116-120	Blanks

Figure 29.2. Data Record Format

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CHAPTER 30. ELIGIBILITY REQUESTS AND DETERMINATIONS FOR SPECIAL PURPOSES

NOTE: For eligibility requests from other agencies and certificates for special purposes see chapter 13.

SUBCHAPTER I. DETERMINATION OF ELIGIBILITY FOR HOSPITAL, DOMICILIARY, MEDICAL AND DENTAL CARE

30.01 RESPONSIBILITY FOR PROCESSING ELIGIBILITY REQUESTS

The determination of eligibility for hospital, domiciliary, medical and dental care is a basic function of the Medical activity to which application for treatment is made. Eligibility for the above is governed by: 38 CFR 17.47 for hospital or domiciliary care; 38 CFR 17.60 for outpatient treatment; and 38 CFR 17.60 and 17.123 for outpatient dental treatment.

a. The medical authority will frequently require certain information and basic determinations from the Adjudication Division.

b. When information for eligibility is required, VA Form 10-7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action, will be initiated by the appropriate medical authority advising of what information is required and action will be taken as provided in this subchapter.

c. When eligibility previously certified is found to no longer exist, the DM&S health care facility to which eligibility information had been furnished shall be notified of the change in status.

30.02 PROCESSING OF VA FORM 10-7131 RELATING TO HOSPITAL, DOMICILIARY, OR MEDICAL OUTPATIENT CARE

a. **Requests Requiring Claims Folder Review Only**

(1) VA Form 10-7131 will be received in duplicate. When completed with requested information, the original will be returned to the originator and the duplicate filed in the claims folder. All information may be handwritten. Care should be exercised to insure legibility. Requests that are simply correspondence action should clear the Adjudication Division within 2 workdays.

(2) The hospital, domiciliary or outpatient clinic will check the specific boxes in part I for the information required. The Adjudication clerk will then furnish the data in part II for each item requested in part I. Those items not applicable will be marked "NA."

(3) When information as to monetary benefits is requested, and the veteran is in receipt of retired pay, part II, items 5 and 5A (Retirement Pay—By Whom Paid), will be completed to show the amount of retired pay and the source responsible for the payment of such retired pay; e.g., $121-Army. (See also par. [29.27d(5)(b).]

(4) Appropriate entry will be made in "Remarks" to advise the VA health care facility of any of the following conditions which affect eligibility to hospitalization or treatment:

(a) Veteran has no period of honorable service, or

(b) Has forfeited rights to benefits, or

(c) Only service was in Commonwealth Army of the Philippines, Special Philippine Scouts or recognized Guerrilla Service. (Medical care in these cases is restricted to [care provided by the Philippine government.]) *NOTE: Effective October 1, 1979, veterans, with such service residing in the United States may be furnished [VA] hospital and nursing home care and medical services [provided by VA] for treatment of service-connected disabilities only.*

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b. **Requests Requiring Authorization Action.** Generally, requests involving authorization action are those requiring a decision on an other than honorable discharge. Occasionally, a line-of-duty determination will be in order with regard to a condition for which service connection is claimed. After accomplishment of any development indicated, formal determination will be prepared for file in accordance with paragraph 14.03. VA Form 10-7131 will be executed to convey the desired information to its originator.

c. **Requests Requiring Rating Board Action.** Request for a determination of service connection for a particular condition will be specified with the entry in the "Remarks" item of part I of the specific condition for which a service-connected determination is needed. A copy of VA Form 10-10m, Medical Certificate, together with any other medical evidence available will be attached to the VA Form 10-7131. Frequently, requests for adjudication of service connection will be for determination of service connection for active psychosis under 38 U.S.C. 602. (See par. 47.09.)

(1) If a rating decision covering the condition in question is already of record, the Adjudication clerk will dispose of the request as outlined in subparagraph a above.

(2) If the condition in question has not been rated, indicated development will be accomplished, after which the case will be referred to a rating board. An extra copy of the eligibility rating may be prepared and attached to VA Form 10-7131 in lieu of completing part II of the form. Otherwise, upon return of the claims folder from the rating board, an Adjudication clerk will fully complete part II of VA Form 10-7131 and return it to the originator. Notice of the decision will not be furnished directly to the veteran by the Adjudication Division. The Medical activity will provide the notice of the determination.

d. **Requests for Eligibility to Medical Benefits Under 38 U.S.C. 612(f)(2).** Veterans who have one or more service-connected disabilities evaluated singly or in combination at 50 percent or more including entitlement to a 50 or 100 percent rate on the basis of a paragraph 28, Prestabilization Rating are eligible for outpatient treatment for all disabilities and are notified by computer generated notice of that eligibility with instructions for applying following initial processing of a rating establishing that level of disability.

(1) If VA Form 10-7131 is received requesting information for eligibility of a veteran under 38 U.S.C. 612(f)(2), the "Remarks" item of part II will be completed to show, as appropriate: "Has 50 percent or more service-connected disability"; "Disability not service connected"; or "Service-connected disability less than 50 percent."

(2) If, after notice has been furnished that the veteran did not meet the eligibility requirements, it is later established that the disability is 50 percent or more, the following action will be taken:

(a) If an input rating is not required, Authorization will initiate VA Form 10-7131, annotated as required above, to notify the requesting VA station of the establishment of 50 percent or more service-connected disability.

(b) No separate action is required when a rating decision reflecting 50 percent or more service-connected disability requires processing as a computer-generated notice will be forwarded to the veteran as indicated above following processing of the rating.

e. **Eligibility Requests for Medical Benefits Under 38 U.S.C. 612(g) and (h).** Veterans who are in receipt of additional compensation or increased pension for aid and attendance or for housebound benefits are entitled to medical services including outpatient treatment and to drugs and medicines and receive computer-generated notification of eligibility and application instruction following initial processing of a rating establishing aid and attendance or housebound status.

(1) VA Form 10-7131 may be completed to show entitlement despite the presence of a future examination control.

(2) The "Remarks" item of part II, will be completed to show as appropriate: "Veteran receiving (additional compensation) (increased pension) by reason of being (in need of regular aid and attendance) (permanently housebound)."

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f. **Eligibility Requests for Health Care Benefits Under Chapter 17 of Title 38 U.S. Code.** Effective October 8, 1977, any serviceperson who was discharged under "other than honorable" conditions is eligible for the health care and related benefits authorized under chapter 17 of title 38, U.S. Code for any disability(ies) incurred or aggravated in line of duty during active service, *PROVIDED THAT* he or she was not discharged by reason of a "bad conduct" discharge or under one of the statutory bars of VAR 1012(C). Upon receipt of an application for treatment from a veteran with an "other than honorable" discharge, the medical activity will initiate a VA Form 10-7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action, advising what information is required.

(1) If a favorable character of discharge determination is of record, or if a decision as to eligibility to chapter 17, title 38, U.S. Code benefits has already been made, the Adjudication personnel will search for a formal rating decision or a memo rating entitled "For Medical Care Eligibility Under Chapter 17, Title 38, U.S. Code (PL 95-126)" which covers the condition in question. If there is no such rating, the case will be referred to the rating board (after any indicated development has been accomplished).

(2) When a character of discharge determination has never been made, or when a statement as to eligibility to chapter 17 benefits has not been annotated on an existing determination, the claims folder will, following any necessary development, be referred to the Authorization activity for an eligibility determination. If the character of discharge determination is favorable or if eligibility for chapter 17 benefits is found to exist, the case must be referred to the rating board for preparation of the memo rating. (See par. 47.18.)

(3) Upon review of the memo rating, VA Form 10-7131, the "Remarks" item of part II will be completed to show: "The individual (is or is not, as appropriate) entitled to health care under Chapter 17 of Title 38, U.S. Code for any disabilities determined to be service connected." (See par. 14.01i.)

g. **Drugs and Medicines for Aid and Attendance Cases—Income Excessive.** The VA will continue to furnish drugs and medicines to veterans entitled to aid and attendance (including those reduced under VAR 1552(B)(1)) whose income exceeds the applicable limitation by not more than $1,000 (38 U.S.C. 612(h)).

(1) To identify *pension cases* with potential eligibility, Message code 652, A&A Term—19 XX Income Over Limit by $_____, will be issued for routing to Adjudication in the event of termination because of excess income pension awards to veterans entitled to aid and attendance (code 1 or 2).

(a) Authorization will review the claims folder to verify that the veteran is rated entitled to A&A and to determine the amount by which income exceeded the maximum annual limitation.

(b) VA Form 20-6560, Notice of Benefit Payment Transaction, will be annotated with entry of the amount over the income limit in the message legend space "$_____, dated and signed by the adjudicator. The form will then be dispatched to the outpatient clinic associated with the regional office. The claims folder will be annotated to show the income information furnished to the outpatient clinic.

(2) Continued entitlement to drugs and medicines must be established annually in those pension cases in which the current year income did not exceed the limitation by more than $1,000. Individual requests for income information for the *next* calendar year will be received on VA Form 10-7131 during the last 3 months of the current year.

(3) Unless the claims folder already contains current data sufficient to permit furnishing income information for the next year, Authorization personnel will develop the required income information by request to the veteran to complete VA Form 21-6897, Statement of Income and Net Worth—Disability.

NOTE: The form will be modified accordingly for Old Law pension cases. The transmittal letter should be completed to indicate the reason for the request and that the completed form should be returned within 60 days.

(4) Response will be entered in "Remarks," part II, VA Form 10-7131 upon receipt of the required income information or at the end of 60 days, whichever is earlier.

(a) When income information is received, the adjudicator will review the claims folder to verify that the veteran is rated entitled to A&A and furnish the determined amount by which income for the next year will exceed the applicable maximum income limitation.

(b) Any case in which the income information received established entitlement to resumption of pension benefits (including A&A allowance), will be handled as a reopened claim and the adjudicator will annotate VA Form 10-7131 to furnish that information.

(c) When income information is not received within 60 days, the VA Form 10-7131 will be annotated to indicate no reply was received from the veteran. No followup action will be [taken].

h. Requests for Determination of Service Connection for Purposes of 38 U.S.C. 109(C)—Polish and Czechoslovakian Armed Forces.

(1) The Medical Administration activity, Wilmington VAC, will maintain the centralized records for members of the Polish and Czechoslovakian Armed Forces who have basic eligibility; i.e., qualifying service and U.S. citizenship, when service connection is claimed and will refer requests for rating determination of service connection to the Adjudication Division, Wilmington, which will exercise sole rating jurisdiction.

(2) When rating action is required, the following, identified as a Public Law 94-491 case, will be referred to the Adjudication Division by VA Form 3230:

(a) VA Form 10-7131 indicating the specific condition(s) for which service connection is claimed;

(b) A copy of the certification of service establishing dates of qualifying service during WWI or WWII;

(c) Records of treatment of the disability during service; and

(d) Current medical evidence relating to the disability.

(3) No VA file number will be assigned for these cases. Temporary control pending completion of rating action (par. 47.16) will be maintained by use of an alphabetical holding file under the claimant's last name.

30.03 PROCESSING OF VA FORM 10-7131 FOR DENTAL OUTPATIENT TREATMENT (38 U.S.C. 612b)

a. **General.** Eligibility to outpatient dental treatment is covered in VAR 6123. Such treatment is furnished to the extent prescribed and in accordance with applicable classification set forth below:

(1) **Class I.** Those having *service-connected compensable* dental disability or condition may be authorized any dental treatment indicated as necessary to maintain oral health and masticatory function. There is no time limitation for making application for treatment and no restriction as to the number of repeat episodes of treatment.

(2) **Class II.** Those having a *service-connected noncompensable dental disability* or *condition* may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected non-compensable dental disability or condition. Application for treatment must be made within 1 year after discharge or release, except that if a disqualifying discharge or release has been corrected by competent authority, application may be made within 1 year after the date of correction. When one-time services are found unacceptable within the limitations of good professional standards, such additional services may be afforded as are required to complete professionally acceptable treatment. These limitations on Class II treatment are not applicable to the following subclasses:

Class II(a). Those having a service-connected noncompensable dental condition or disability adjudicated as resulting from *combat wounds* or *service trauma* may be authorized any treatment necessary for the correction of such service-connected noncompensable condition or disability.

Class II(b). Those having a service-connected noncompensable dental condition and former prisoner of war status of less than 6 months may be authorized any treatment as necessary for the correction of such service-connected dental condition or disability.

Class II(c). Those who were prisoners of war for 6 months or more may be authorized any needed dental treatment.

Class IV. Those whose service-connected disabilities have been rated at a schedular 100 percent or who are receiving the 100 percent rate by reason of individual unemployability may be authorized any needed dental treatment.

b. **Eligibility for Treatment Without Need for Rating Action.** When a timely application has been made for Class II (noncompensable service-connected) dental treatment, the applicant may be deemed eligible and dental treatment authorized by DM&S on a one-time completion basis without referral to Adjudication if: [ ]

(1) The examination to determine the need for dental care has been accomplished within 14 months after date of discharge or release unless delayed through no fault of the veteran, and

(2) Sound dental judgment warrants a conclusion the condition originated in or was aggravated during service and the condition existed at the time of discharge or release from active service, and

(3) The treatment will not involve replacement of a missing tooth noted at the time of VA examination except:

(a) In conjunction with authorized extraction replacement, or

(b) When a determination can be made on the basis of sound professional judgment a tooth was extracted or lost on active duty.

c. **Eligibility for Dental Treatment Under 38 U.S.C. 612(b)(1)(G).** When an application has been made for Class II(c) benefits and the veteran's name appears on the DM&S prisoner of war listing, the applicant may be deemed eligible for dental treatment by DM&S without referral to Adjudication.

d. **Referral of VA Form 10-7131 by Treating Facility.** The treating facility will initiate VA Form 10-7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action, upon determining that the claim for treatment involves a compensable dental disability (Class I), missing teeth (Class II) (see subpar. b above for exceptions), combat wounds or service trauma (Class II(a)), POW status (Class II(b) or II(c)) [or] total disability status (Class IV) [ ] This will be done promptly upon receipt of OPT claim and prior to VA examination. Any development required to establish dates and places of treatment are to be completed by personnel of the treating facility. A copy of the veteran's application, VA Form 10-10, Application for Medical Benefits, plus copies of any additional statements showing dates and places of treatment, will be received with the VA Form 10-7131 from the treating facility, except in referrals of Class II(c) or Class IV cases.

NOTE: Claims for missing teeth will not be referred for adjudicative processing unless exercise of professional judgment alone cannot establish entitlement after VA examination. In such cases, a copy of the VA examination will also be submitted with VA Form 10-7131 annotated "Claim for missing teeth under [38 CFR 17.123a]" in part I, item 6.

(1) The basic procedures for processing VA Form 10-7131 for dental outpatient treatment are the same as those given in paragraph 30.02a. [ ] If the request involves verification of WWI POW status or total service-connected disabilities, the request will indicate in the "Remarks" item of part II "Dental Eligibility–POW, 38 U.S.C. 612(b)(1)(G) or Dental Eligibility–Total Disability, 38 U.S.C. 612(b)(1)(H)."

[ ]

(2) If the request involves a determination of the character of discharge, the procedures in paragraph 30.02b will be followed.

e. **Review and Development**. Upon receipt of VA Form 10-7131 requesting adjudicative action on a dental claim, Authorization personnel will review the request to determine that the claim is based on one or more of the above categories.

(1) VA Form 10-7131 received for a dental claim will be completed by Authorization under the following circumstances:

(a) Claim is for treatment of service-connected *compensable* dental disability or condition.

(b) Claim is for service-connected noncompensable dental condition(s) or disability resulting from *combat wounds* or *service trauma.*

(c) Claim is based on prisoner of war status (less than 6 months or WWI case).

(d) Claim is based on veterans combined schedular evaluation of 100 percent (not par. 28, 29 or 30) or eligibility to the 100 percent rate on the basis of individual unemployability.

(e) Claim is under [38 CFR 17.123a] for *teeth extracted in military service* provided:

1. The claim is made within 1 year of discharge or release from active duty or within 1 year after date of correction of a disqualifying discharge or release; and

2. Service did not consist entirely of active or inactive duty for training; and,

3. Exercise of professional judgment alone cannot establish entitlement.

[ ]

(2) If one of the above circumstances *does not* apply, or if the claim is by a veteran of the Spanish American or Indian Wars, VA Form 10-7131 will be returned to the medical facility with part II "Remarks" annotated to state:

"Improper referral, authorization action is not required."

(3) If one or more of the above circumstances *does* apply, and clinical records for alleged treatment are not on file, VA Form [00]-3101 will be initiated by Authorization, requesting service dental records.

f. **Completion of VA Form 10-7131**. When service dental records are received in a case of claim under [38 CFR 17.123a] for missing teeth, Authorization personnel will have primary responsibility for review of the service dental records and the furnishing of prompt response to the request. Based on evidence contained in the service records, the following actions will be taken by Authorization personnel:

(1) When service dental records contain a panoramic radiograph (X-ray) taken at induction, the X-ray will be returned with VA Form 10-7131, part II, Remarks, annotated to indicate the attachment. No other action will be required.

(2) When service records contain a complete dental examination at induction, VA Form 10-7131, part II, Remarks, will be annotated to show whether or not any teeth were missing at induction; e.g., "Teeth #5 and #12 missing at induction." If notation on induction dental examination is indefinite, such as "acceptable," "undisqualifying" or "not examined," the first examination after induction will be accepted as an induction examination provided such examination was not made more than 60 days after induction. Otherwise, no statement of missing teeth at induction will be made.

(3) When service records contain record of dental treatment, the records will be reviewed for indication of extractions. Annotation will be made to show, by number, any teeth extracted in service; e.g., "Teeth #4 and #14 extracted in service." In the event a tooth is identified as missing at induction but treatment records show its extraction, such tooth will be listed as extracted in service and will not be shown as missing at induction.

[ ]

g. **Disposition of VA Form 10-7131 for Claims Under 38 U.S.C. 612(b) (1)(G) and (H)**

(1) When a rating decision has established existence of service-connected disability with a combined schedular evaluation of 100 percent (not par. 28, 29 or 30) or eligibility to the 100 percent with a rate on the basis of individual unemployability, the "Remarks" item of part part II will be annotated, "Veteran 100 percent service connected." (Permanency of the total service-connected disabilities is not required for purposes of total benefits.)

(2) When service records establish that a veteran of WWI service was in POW status for 181 days or more, the response will indicate "WWI POW–181 Days or More." (As the respective service department has sole responsibility for determinations as to the fact of POW status and the duration of any such status, verification will be made only on the basis of official records.)

(3) If, after notice has been furnished that the veteran did not meet the eligibility requirements, it is later established by rating or service department determination that the veteran now meets those requirements, Authorization will initiate VA Form 10-7131, annotated as required above, to notify the requesting health care facility of eligibility.

h. **Referral to Rating Board**

(1) In addition to the normal referral for rating required when VA Form 21-526, Veteran's Application for Compensation [or] Pension, is filed as a claim for compensable dental disability, rating action (see ch. 51) will also be required for the proper disposition of VA Form 10-7131 on a claim for dental treatment for:

(a) Service-connected noncompensable dental disabilities or conditions resulting from combat wounds or service trauma.

(b) Service-connected noncompensable disabilities if the veteran was a prisoner of war.

(c) Teeth extracted in service when service records do not identify missing teeth at induction or extraction in service under [38 CFR 17.123a.]

(2) When service dental records do not contain an induction panoramic radiograph (X-ray) or do not permit identifying whether or not any teeth were missing at induction or extracted in service, VA Form 10-7131, part II, Remarks, will not be annotated prior to referral and decision by the rating board.

(3) If the period of service was prior to 1953, photostat copies of naval dental examinations are generally not usable for rating purposes since red and blue markings were used on the originals which cannot be distinguished from each other on photo-copies. In these cases the folder should not be referred to the rating board until the originals are obtained. (See also par. 51.03.)

i. **Disposition of VA Form 10-7131.** After a dental rating decision has been made the Adjudication clerk will staple a copy of the dental rating to the original of the VA Form 10-7131 and return it to the originating office. Notice of the decision will not be furnished directly to the veteran by the Adjudication Division. The Chief Dental Officer will notify the claimant of the final decision on the application.

[ ]

j. **Notice of Disagreement.** If a notice of disagreement is received, Adjudication will be responsible for the preparation of the statement of the case in those instances when service connection is at issue, including covering such issues as service trauma, POW status, combat wounds or a compensable evaluation. (See par. 18.07.)

NOTE: When certification of an appeal is in order, the dental treatment records will be forwarded with the claims folder for appellate consideration in all claims for service connection for dental disabilities. If there is no record of dental examinations or dental treatment, a statement to that effect will be made of record. The records forwarded will in all cases include the application for dental treatment and the determination denying the benefits or the additional benefit sought in the appeal.

30.04 ELIGIBILITY FOR MEDICAL TREATMENT TENTATIVELY APPROVED ON PRIMA FACIE EVIDENCE

a. **General.** Clinic Directors of regional office outpatient clinics and Directors of medical centers and independent outpatient clinics, or their designees are authorized to determine prima facie eligibility upon which treatment may be initially authorized when the following conditions are met:

(1) The veteran was discharged or released with an honorable or general discharge from 6 or more months of active service.

(2) Application is made within 6 months from date of discharge or release.

(3) The application of sound medical judgment warrants a tentative conclusion that the condition originated in or was aggravated during service.

b. **Notice of Adjudication.** When treatment based on prima facie eligibility is initially authorized, VA Form 10-7131, will be prepared and annotated "Medical care being authorized for (condition) on prima facie evidence of eligibility." The executed form will be promptly forwarded together with a copy of the VA examination, hospital report, and/or outpatient treatment report (as applicable) to the Adjudication Division of the office with claims folder jurisdiction.

c. **Adjudication Procedures.** After any necessary development for service medical records, refer the case to the rating board for determination of service connection for the condition(s) at issue. Give prompt notice of either favorable or unfavorable rating action to the medical facility originating the request, by returning VA Form 10-7131 properly completed. (Par. 25.02.)

30.05 PROCESSING OF VA FORM 10-7131 SHOWING POSITIVE TUBERCULIN REACTION

a. **Background.** Individuals who receive tuberculin tests will sometimes show a change from negative to positive without any other evidence of a tuberculous infection. The military service departments have adopted a program of chemotherapy for personnel who had a negative tuberculin test on entrance into service but who were found to have converted to positive during service.

(1) The chemotherapy prescribed for such personnel is to be continued over a 12-month period. This is in accord with recognized medical practice as it reduces the incidence of subsequently acquired tuberculosis. It must be emphasized, however, that a positive tuberculin reaction without any other evidence of a tuberculous infection is not a disease or disability and is not a reason for discharge from service.

(2) At the request of the military service departments, VA outpatient clinics and medical centers will provide continued chemotherapy for the remainder of the 12-month period to discharged personnel who have had tuberculin test conversion from negative to positive during service. In every such case, the outpatient clinic or medical center will forward to the appropriate regional office VA Form 10-7131 containing the following legend:

"Medical care being authorized for positive reaction to tuberculin test on basis of prima facie evidence of eligibility."

b. **Action Required.** Upon receipt in the Adjudication Division of VA Form 10-7131 bearing the legend in subparagraph a(2) above; it will be construed as indicating that there is no disease or disability present.

(1) File the VA Form 10-7131 in the claims folder without any control, since a final report of examination will be submitted at the end of the 12 months' treatment.

(2) In completing any VA Form 10-7131 subsequently received in which the item "Service Connected" is checked in part I, do not make reference to service connection for a positive tuberculin reaction. (See par. 22.02b for compensation claims based on positive tuberculin reaction.)

SUBCHAPTER II. DETERMINATIONS FOR SPECIAL PURPOSES

30.06 APPLICATION FOR AUTOMOBILE OR OTHER CONVEYANCE AND ADAPTIVE EQUIPMENT

a. **Automobile Allowance and Adaptive Equipment.** The eligibility requirements for veterans and service personnel to receive the automobile allowance *and* adaptive equipment under 38 U.S.C. chapter 39 are:

(1) One of the following disabilities must exist and be the result of injury or disease incurred or aggravated during active military, naval or air service;

(a) Loss or permanent loss of use of one or both feet;

(b) Loss or permanent loss of use of one or both hands;

(c) Permanent impairment of vision of both eyes: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees in the better eye.

(2) Veterans not serving on active duty must be entitled to compensation for the disability and the disability must be service connected in accordance with usual criteria (38 CFR 3.808(b)).

b. **Adaptive Equipment Only.** The eligibility requirement for veterans to receive adaptive equipment *only* but *not* the automobile allowance is entitlement to disability compensation for ankylosis of one or both knees or hips [38 U.S.C. 1902(b)(2)].

c. **Disability Acquired Subsequent to Discharge.** Disability which is acquired subsequent to discharge from service as a result of treatment in a VA medical facility or as a result of training under 38 U.S.C. chapter 31, even though compensation is payable under 38 CFR 3.800(a), does not qualify a veteran for these benefits (38 U.S.C. 351). [Entitlement to compensation under 38 U.S.C. Section 360 does not qualify for these benefits.]

NOTE: Automobile adaptive equipment may be furnished to a chapter 31 beneficiary when VR&C determines that adaptive equipment is necessary to overcome an employment handicap to which a service-connected disability materially contributes and to achieve the goals of the program of rehabilitation.

d. **Application for Automobile Allowance.** A formal claim on VA Form 21-4502, Application for Automobile or Other Conveyance and Adaptive Equipment, is required when the veteran [or serviceperson] is applying for the automobile allowance. The application for an automobile or other conveyance is deemed to be an application for the adaptive equipment specified for the claimant's disability by directive of the Chief Medical Director. There is no time limit for filing a claim.

e. **Application for Adaptive Equipment Based on Ankylosis.** When the veteran is entitled to adaptive equipment only, a formal claim on a VA Form 10-1394, Application for Adaptive Equipment—Motor Vehicle, is required. There is also no time limit for filing a claim for adaptive equipment based on ankylosis.

f. **Notification of Potential Eligibility.** [On all original or reopened claims in which the requirements of 38 U.S.C. 1901 (38 CFR 3.808(b)) or 1902(b)(2) are initially met, the rating board shall dispose of the issue of entitlement to automobile *and* adaptive equipment or adaptive equipment *only* on the disability rating by showing either rating code 61 or 61A and the applicable paragraph as found in appendix A. (See par. 46.08.) Upon receipt of the rating decision, authorization will inform the claimant of potential eligibility and furnish the appropriate form.]

(1) If the veteran [or serviceperson] is eligible for the automobile allowance, furnish a VA Form 21-4502 in duplicate for completion and return of both copies.

(2) If the veteran is entitled to adaptive equipment only, furnish a VA Form 10-1394, Application for Adaptive Equipment—Motor Vehicle, and instruct the veteran to complete all items in section I except items 5 and 6 and to specify the disability upon which the claim is based in item 7E. The completed VA Form 10-1394 shall be returned to the nearest VA medical facility.

g. **Application Received.** [Authorization] will review VA Form 21-4502 with the claims folder [ ] to determine whether the veteran or serviceperson is entitled. If a decision prepared under prior criteria contains a notation that the claimant was not entitled to the automobile allowance (peacetime only or not as direct result of performance of duty), but basic eligibility under current law is established, the Authorization activity will annotate the rating, "Claimant entitled under Public Law 95-116."

(1) Review the Target M15 screen to determine whether prior payment has been made. Display of "Y" in the "Auto Allowance Paid" field and display of the terminal digit of the year in which the last payment was made in the "Auto Adaptive Equipment" field will indicate prior payment of the respective benefit. The adjudicator must also check the claims folder for evidence of prior payment; i.e., a copy of VA Form 21-4502 annotated by the Finance activity indicating payment. When the only evidence of prior payment is the master record indicator, request the Finance activity to furnish the date of the prior payment and identification of the regional office which processed it.

(a) If an application from a *person on active duty* is incomplete in any essential part or the medical evidence or service status is insufficiently documented, the Veterans Services Officer will be advised of the deficiency and requested to obtain the evidence necessary.

(b) After any necessary development [and] prior rating decisions do not establish existence of qualifying service-connected disability, refer the claim to the rating board. If no claim for other VA benefits has been filed, prepare a memorandum rating (par. 47.11).

(c) [If an application is not approved, fully inform the claimant of the reason for denial and furnish appellate rights.]

(2) When the "Type of Conveyance Applied For," on VA Form 21-4502 is checked "Other," and specified, make a determination of approval or disapproval of the type of conveyance prior to any other action on the application. Prepare the determination, in the format prescribed in paragraph 14.34, for the approval of the Adjudication Officer or designee, not lower than a section chief.

[(3) Ordinarily, an application on VA Form 21-4502 will have been completed and approved by Authorization to certify eligibility before the claimant acquires possession of or title to the vehicle. However, payment of the automobile allowance is not precluded if the vehicle was purchased before the adjudicative action establishing eligibility *providing* that the claimant was actually eligible (effective date of qualifying disability is controlling) on the date which the claimant signed the sales contract.]

[4] The transfer of possession of a vehicle under the contract amounting to a lease does not qualify for the automobile allowance under 38 U.S.C. 1902(a). The principal criterion for determining whether a given arrangement is a purchase of an automobile and not merely a lease is whether the veteran and vendor are absolutely bound, at the outset, to a purchase and sale at sometime. If the veteran retains the option of considering the payments as rent and is not obligated to purchase the vehicle at the end of the lease period, or if the dealer retains the right to take the car back even after the veteran meets all the payments due, then the agreement should be regarded as a lease rather than a purchase contract.

h. **Favorable Determination of Entitlement.** When entitlement criteria in 38 CFR 3.808 are met, the Authorization activity shall complete section II, Certificate of Eligibility, on VA Form 21-4502. Enter all qualifying disabilities in section II.

(1) Release the original of VA Form 21-4502 to the applicant with the list of adaptive equipment unless referral to outpatient clinic is required under subparagraph i below.

(2) Place the file copy in the claims folder.

i. **Referral to Outpatient Clinic**

(1) **Other Conveyance.** In any case in which the applicant is found eligible for a conveyance *other than an automobile or similar vehicle,* complete and approve section II of VA Form 21-4502, as indicated in subparagraph h above, and refer the form to the outpatient clinic with a copy of the rating decision.

(a) Annotate the copy of VA Form 21-4502 to show the date and place of referral and file in the claims folder.

(b) After determination of any adaptive equipment for such "other" vehicle, VA Form 21-4502 and supplemental authorization on VA Form 10-1394, Application for Adaptive Equipment—Motor Vehicle, will be released to the applicant by the outpatient clinic.

(2) **Adaptive Equipment.** Refer all claims for adaptive equipment prior or subsequent to approval of an initial application for automobile or for repair, replacement or reinstallation of such equipment to the outpatient clinic serving the applicant's residence for consideration by the designee of the Chief Medical Director. This includes any case in which an application for automobile or other conveyance has been approved, whether before or after January 11, 1971.

j. **Recording and Reporting.** When the original VA Form 21-4502 with section III completed by the [claimant] is returned and scheduled for payment, the Finance activity will prominently annotate the copy of the application in the claims folder to show voucher schedule number, date, amount authorized for payment and the initials for the voucher auditor. Permanently retain the copy of the VA Form 21-4502, annotated as set forth above, in the award section of the claims folder in order to prevent duplicate payment in the event a subsequent claim is received. The Finance activity will also record the payment in the master record and forward a copy of the completed VA Form 21-4502 to the outpatient clinic of jurisdiction.

k. **Processing Adaptive Equipment Eligibility Data Requests**

(1) Requests for eligibility data for reimbursement for adaptive equipment for a vehicle acquired prior to receipt of the automobile allowance will be received in duplicate from the medical center or outpatient clinic. The request will identify the claimant and the reason for the request; i.e., "Was claimant eligible under 38 U.S.C. 1902 on (date)?" (date expense was incurred for purchase, installation, repair, or reinstallation of adaptive equipment). Upon receipt of the request, Adjudication Division personnel will review the claims folder to determine eligibility as follows:

(a) If claimant has not previously filed a claim for the automobile allowance and adaptive equipment, determine basic eligibility as stated in subparagraph [g] above.

(b) If evidence of entitlement or nonentitlement is of record, or after a determination of basic eligibility has been made, determine the eligibility of the claimant for an automobile allowance on the date furnished by the medical facility and annotate the request form to show, "Claimant (was)(was not) eligible on (date)," (date furnished by the medical facility). File the file copy of the eligibility request in the claims folder and return the original to the requester.

(2) When a request for eligibility for adaptive equipment only is received based on service-connected ankylosis, review the claims folder to determine if the veteran is entitled. Annotate the request to show eligibility because of service-connected ankylosis, or that the veteran is not eligible. Furnish a copy of the VA Form 21-6796, Rating Decision, if eligibility is established.

l. **Notice of Disagreement or Substantive Appeal Received.** When a claimant fields a notice of disagreement or substantive appeal because of the denial of a claim for the automobile allowance and adaptive equipment, the following procedures are to be applied:

(1) If the disallowance resulted from the denial of *basic* eligibility, the Authorization activity will furnish the statement of the case and certification of appeal.

(2) If the claimant has established basic eligibility to the automobile allowance and adaptive equipment and the issue is the result of disallowance by the Medical activity for certain adaptive equipment, transfer the claims folder to the medical facility for preparation of statement of the case.

(a) The medical facility will return the statement of the case and claims folder to the Authorization activity for release of the statement of the case to the claimant.

(b) If a substantive appeal is filed, forward the claims folder to the Medical activity for processing and certification of the appeal.

30.07 APPLICATION FOR SPECIALLY ADAPTED HOUSING OR SPECIAL HOME ADAPTATION GRANT

a. **Jurisdiction.** The Adjudication Division of a regional office has jurisdiction and responsibility for determining entitlement for specially adapted housing and the special home adaptation grant. The criteria for basic entitlement for these benefits are set forth in 38 CFR 3.809 and 3.809a (38 U.S.C. chapter 21). Disability which is acquired subsequent to discharge from service as a result of treatment in a VA medical facility or as the result of training under 38 U.S.C. chapter 31, even though compensation is payable under 38 CFR 3.800(a), does not qualify for these benefits (38 U.S.C. 351). [Entitlement to compensation under 38 U.S.C. section 360 does not qualify for these benefits.]

b. **Notification of Potential Eligibility**

[(1) On all original or reopened claims in which the requirements of 38 CFR 3.809 or 3.809a are initially met, the rating board shall dispose of the issue of entitlement to specially adapted housing on the disability rating by showing either rating code 41 or 41A and the applicable paragraph as found in appendix A. (See par. 46.08.) Additionally, the rating board shall prepare a copy of the rating decision with the veteran's full name and address in the upper right corner of the narrative. (See par. 49.06.)

(2) Upon receipt of the rating decision and copy from the rating board, the adjudicator will release the copy to the Loan Guaranty Division before taking any other authorization action.

(3) The Loan Guaranty Division is responsible for furnishing the veteran VA Form 26-4555, Veterans Application in Acquiring Specially Adapted Housing or Special Home Adaption Grant, upon receipt of the copy of the rating.

c. **Receipt of VA Form 26-4555.** VA Form 26-4555 will be routed to the Loan Guaranty Division upon receipt in the mail room. If VA Form 26-4555 is received in the Adjudication Division first, hand-carry the application to Loan Guaranty. After initial processing, Loan Guaranty will hand-carry the VA Form 26-4555 to the Adjudication Division for processing of the basic eligibility determination within 10 working days.

(1) If basic eligibility was previously established, hand-carry a copy of the rating with the claims folder to Loan Guaranty for a medical feasibility determination and/or notification of eligibility.

(2) If the benefit was previously furnished, notify the claimant of the prohibition against duplication of the benefit. However, payment under 38 U.S.C. 801(b) does not preclude subsequent entitlement under 38 U.S.C. 801(a).

(3) If basic eligibility was previously denied and no new evidence was submitted, prepare a dictated letter giving the veteran a full and adequate statement of the reasons for disallowance of the claim, together with notice of the right to appeal.

(4) If there is no determination of record concerning basic eligibility, refer the claim to the rating board for preparation of a rating decision. The rating board shall dispose of the issue using dictator rating code 41, 41A, 42 or 42A and the applicable paragraph as shown in appendix A. (Also, see par. 47.12.) Upon receipt of the completed rating, the adjudicator shall follow the procedures in subparagraph (c)(1) or (3) above.

d. **Loan Guaranty Unable To Make Medical Feasibility Determinations.** See paragraph 47.12b.

e.] **Medical Feasibility Not Established.** When medical feasibility cannot be certified, the claims folder with the VA Form 10-4555b, Certificate of Medical Feasibility, containing the comments of the Examining Medical Board and the designee of the Chief Medical Director, will be returned to the Adjudication Division for notification to the veteran of the unfavorable determination as provided in subparagraph [f] below.

[f.] **Notification to Claimant.** Prepare a dictated letter utilizing the comments of the examining Medical Board and designee of the Chief Medical Director to give the veteran a full and adequate statement of the reasons for the disallowance of the claim together with notice of the right to appeal. A letter along the following lines should be used:

"Although basic eligibility for assistance in acquiring specially adapted housing has been established because of your service-connected disabilities, it has been found that due to (insert reason for medical infeasibility), it is not medically feasible for you to occupy specially adapted housing at this time.

"In view of this determination, it has been necessary to disallow your application for specially adapted housing. However, when your condition improves to the point where (insert applicable contingency), we will be pleased to reconsider this matter upon your request."

[g.] **Notice of Disagreement or Substantive Appeal Received.** The following procedures are applicable to notices of disagreement or substantive appeals taken from the denial of claims for specially adapted housing:

(1) **From Disallowance of Basic Eligibility.** Adjudication Divisions are responsible for furnishing the statement of the case and certification of appeal arising from rating decisions denying *basic* eligibility.

(2) **Medical Infeasibility.** When notice of disagreement arises from a determination that medical feasibility has not been established, transfer the claims folder to the examining Medical activity for preparation of the statement of the case.

(a) Upon completion of the statement of the case, the examining Medical activity will return it and the claims folder to the Adjudication Division for release of the statement of the case to the veteran.

(b) If a substantive appeal is filed, forward the claims folder to the examining Medical activity for processing and certification of the appeal.

[h.] **Control and Followup**

(1) **Control Period.** Establish a [Pending Issue File under end product 290 for 60 days from the] date of receipt in the VA of VA Form [26]-4555, Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant—38 U.S.C. 801(a) or 801(b), for completion of the actions required under this paragraph and paragraph 47.12.

(2) **Followup.** If the examination and certificate of medical feasibility have not been received within the 60-day control period, make a followup and extend the control for an additional 15 days.

(3) **Expedited Action.** In the event the initial control period and the additional 15-day period expire without receipt of the examination and certification, a telephone or personal conference between the Adjudication Officer and clinic Director will be required, and a record of the conference placed in the claims file.

[i.] **Withdrawal of [Basic Eligibility.]** When, subsequent to [Loan Guaranty's] issuance of [ ] notice to the veteran, reconsideration of the case results in a rating decision denying basic eligibility, inform the veteran of the determination and of the right of appeal. [Furnish the Loan Guaranty Division copies of the rating decision and letter denying basic eligibility.]

30.08 DETERMINATIONS OF ELIGIBILITY TO VR&E BENEFITS ON BASIS OF SERVICE IN ALLIED FORCES (38 U.S.C. 109(b)) (WRO, WASHINGTON, DC)

a. **Development.** Jurisdiction in these cases is within the exclusive and permanent jurisdiction of WRO, Washington, DC (par. 2.02a(12)).

(1) Prior to referral to Adjudication Division (WRO) for rating action, the office of original jurisdiction will obtain a written authorization from the veteran for the release of his/her medical records by the Allied Government.

(2) Upon receipt in WRO, if further service records are necessary, VA Form [00-3101, Request for Information,] will be prepared for dispatch through the Director, Veterans Assistance Service (27), Central Office, calling attention to the veteran's authorization for the release of the medical records, which will be attached, and including thereon a request for information in the following form:

"In order to determine service connection and degree of any disability the applicant may have, under laws administered by the Veterans Administration, please furnish:

"(a) A copy of the veteran's examination at enlistment.

"(b) A copy of the veteran's examination at discharge.

"(c) Copies of all medical or clinical records.

"(d) Copies of physical examination made after discharge in connection with any claim based upon disability which may be of record.

"(e) Percentage rating of veteran's disability.

"(f) Amount of disability compensation or pension which is currently being paid."

1. Withdrawal of Certification. When, subsequent to issuance of a certification of medical feasibility and notice to the veteran, reconsideration of the case results in a rating decision denying basic eligibility, [inform] the veteran [ ] of the determination and of the right of appeal. The notice to the veteran will include information of the withdrawal of the certification of eligibility for special adapted housing.

(1) [Annotate] the original of the certificate of basic eligibility in the claims folder [ ] "Canceled—See Rating Decision dated _____."

(2) [Inform] the Loan Guaranty Officer in the local office [ ] of the withdrawal of the certificate of basic eligibility.

30.08 DETERMINATIONS OF ELIGIBILITY TO VR&E BENEFITS ON BASIC OF SERVICE IN ALLIED FORCES (38 U.S.C. 109(b)) (WRO, WASHINGTON, D.C.)

a. Development. Jurisdiction in these cases is within the exclusive and permanent jurisdiction of WRO, Washington, D.C. (par. 2.02a(12)).

(1) Prior to referral to Adjudication Division (WRO) for rating action, the office of original jurisdiction will obtain a written authorization from the veteran for the release of his/her medical records by the Allied Government.

(2) Upon receipt in WRO, if further service records are necessary, VA Form 60-3101 will be prepared for dispatch through the Director, Veterans Assistance Service (27), Central Office, calling attention to the veteran's authorization for the release of the medical records, which will be attached, and including thereon a request for information in the following form:

"In order to determine service connection and degree of any disability the applicant may have, under laws administered by the Veterans Administration, please furnish:

"(a) A copy of the veteran's examination at enlistment.

"(b) A copy of the veteran's examination at discharge.

"(c) Copies of all medical or clinical records.

"(d) Copies of physical examination made after discharge in connection with any claim based upon disability which may be of record.

"(e) Percentage rating of veteran's disability.

"(f) Amount of disability compensation or pension which is currently being paid."

(c) Copies of all medical or clinical records.

(d) Copies of physical examination made after discharge in connection with any claim based upon disability which may be of record.

(e) Percentage rating of veteran's disability.

(f) Amount of disability compensation or pension which is currently being paid."

(g) Verification that the veteran has not applied for or received the same or similar benefit from the Government in whose armed forces he or she served.

b. **Referral to Rating Board.** When the necessary report is received, refer the file to the rating board for a memorandum rating establishing the disability or disabilities that are service connected and the percentage evaluation thereof. (See par. 47.05.)

c. **Return to Authorization.** After completing the rating, return the file to Authorization for action in accordance with existing procedures. If further development is necessary, establish an appropriate diary and return the file to Authorization for correspondence preparation or other necessary action.

30.09 PROCEDURES FOR HANDLING REQUESTS FOR RATING AND OTHER INFORMATION FROM INSURANCE ACTIVITY

a. **General.** The regional office of jurisdiction in accordance with chapter 2, subchapter 1, is responsible for insurance purpose determinations involving live veterans. Determination responsibility for insurance purposes in a deceased veteran's case is assigned to the Adjudication Division of the requesting RO&IC (Regional Office and Insurance Center), unless the decision is already of record. Specific procedures for handling insurance activity requests for determinations are explained below.

b. **Use of Wang E-Mail (Electronic Mail) or VA Form 29–4373, Request for Disability Compensation Rating for Insurance Purposes (Government Life Insurance)**

(1) Insurance applications are enclosed in Target-generated award letters notifying veterans of an initial or subsequent service-connected disability rating. Insurance underwriters extract service-connected data either from Target's M13 screen or from the BIRLS ICP (Inactive Compensation and Pension) screen.

(2) If a veteran applies for insurance under 38 U.S.C. 722 or applies for waiver of premiums under 38 U.S.C. 712, the Insurance Center will review Target for service-connected data. If Target data is inadequate for underwriting purposes, the Insurance Center will request information from the RO having jurisdiction of the veteran's claims folder. The Insurance Center will contact the RO either by Wang E-Mail or by VA Form 29–4373 for a decision on whether or not a statutory bar to payment of disability compensation exists, verification of service-connected disabilities, or any other information needed to underwrite the insurance claim.

(3) If an insurance activity specifically requests a copy of a rating and/or administrative decision and the decision is already of record, send a photocopy to the requesting Insurance Center. The copy *must be certified* as a true copy by an individual authorized to certify documents. If information only has been requested, the response to the requesting Insurance Center may be made via E-Mail.

(4) If an insurance activity requests an adjudicative decision concerning a live veteran and the decision has not been made, establish a pending issue in Target under EP 290 and take the necessary development action. Advise the requesting insurance activity via E-Mail that there will be a delay in providing the requested information. When the decision is made, forward the requested information (certified copies only of specifically requested formal ratings or administrative decisions) to the Insurance Center and clear the end product control.

(5) Insurance activities will also request information from a deceased veteran's claims folder. Issues covered concern findings of presumptive death and fact of death, homicide decisions, competency ratings for beneficiaries of insured death benefits, and competency ratings for gratuitous insurance under 38 U.S.C. 722(b).

(a) If an insurance activity requests information from a deceased veteran's folder and the decision has already been made, follow the procedures outlined in subparagraph b(3) above.

(b) If an insurance activity requests a determination which has *not* been made, permanently transfer the claims folder to the Adjudication Division of the requesting RO&IC. Annotate VA Form 70–7216a, Request for and/or Notice of Transfer of Veterans Records, with "M21-1, paragraph 30.09b(5)" as the reason for transfer. That station now has jurisdiction over these insurance issues. Any concurrent adjudicative issues will be the responsibility of the Adjudication Division in Philadelphia or St. Paul.

c. **Notification of Change in Competency Status and Fiduciary.** See paragraph 28.05.

d. Requests from the VA Insurance Centers for Competency Determinations on Insured Veteran

(1) A request for a rating determination of competency and certification of fiduciary may be made to the regional office having jurisdiction over the geographic area in which an insured resides. This request will be made if an insurance activity has received evidence or notice of a court decree of incompetency or of appointment of a fiduciary by reason of incompetency, or other information (not constituting a judicial determination) indicating that the insured may be incompetent.

NOTE: Requests will be received without regard to whether a claims folder exists or their status as a claimant for compensation or pension benefits.

(2) Insurance Center requests will include:

(a) VA file number of the insured.

(b) Location of the claims folder as shown in BIRLS.

(c) Address of the person for whom the determination is requested and names and addresses of next of kin.

(d) Copies of all medical and other evidence alleging incompetency.

(e) The amount of insurance benefits or proceeds payable and the method of payment.

(3) Obtain related claims folders and review along with evidence received from the Insurance Center.

NOTE: If the person for whom the rating is requested is identified as a veteran without a VA file number, assign a file number and prepare a claims folder.

(4) If the veteran is deceased, notify the requesting Insurance Center.

(5) If payments are being made to a fiduciary (including spouse-payee or VA medical center Director) or on a supervised direct pay basis or, if payments are not being made but the person has been previously determined to be incompetent for VA purposes, the VSO will be advised of the facts concerning the insurance proceeds payable.

(a) If a current VA Form 27-555, Certificate of Legal Capacity to Receive and Disburse Benefits, is of record, send a memorandum to the VSO requesting recertification of a fiduciary.

(b) Otherwise, an initial request for certification will be made using VA Form 21-592, Request for Appointment of a Fiduciary, Custodian or Guardian.

(6) If certification or recertification of fiduciary has been made, VA Form 27-555 will be returned to the Adjudication Division where appropriate action will be taken on any running award.

(7) The request for a competency determination, supporting evidence, rating decisions as to competency, and VA Form 27-555 will be filed in the claims folder (if any) when regional office actions are completed. Return certified copies to the requesting Insurance Center.

e. Requests from the VA Insurance Centers for Competency Determinations on Death Claims Beneficiaries

(1) A request for a rating determination of competency and certification of fiduciary is made to the RO&IC Adjudication Division in Philadelphia or St. Paul. This request is made if an insurance activity receives evidence or notice of a court decree of incompetency, appointment of a fiduciary by reason of incompetency, or other information (not constituting a judicial determination) indicating that the death claims beneficiary may be incompetent.

NOTE: Requests are made for both veterans and nonveterans without regard to whether a claims folder exists, or their status as a claimant for compensation or pension benefits.

(2) Insurance Center requests include:

(a) VA file number of the insured and, if the request relates to an insurance beneficiary, the VA file number under which the beneficiary may have applied for benefits as a veteran or as a dependent of a veteran other than the insured, if known.

(b) Location of the claims folder as shown in BIRLS.

(c) Indication of relationship of the beneficiary to the insured.

(d) Address of the person for whom the determination is requested and names and addresses of next of kin.

(e) Copies of all medical and other evidence alleging incompetency.

(f) The amount of insurance benefits or proceeds payable and the method of payment.

(3) Obtain related claims folders and review along with evidence received from the Insurance Center.

NOTE: If the person for whom the rating is requested is identified as a veteran without a VA file number, assign a file number and prepare a claims folder. Otherwise, do not assign a file number. Maintain temporary control of cases in which neither a file number is assigned nor which relate to an existing file by using an alphabetical holding file under the person's last name.

(4) If payments are being made to a fiduciary (including spouse-payee or VA medical center Director) or on a supervised direct pay basis or, if payments are not being made but the person has been previously determined to be incompetent for VA purposes, the VSO will be advised of the facts concerning the insurance proceeds payable.

(a) If a current VA Form 27-555, Certificate of Legal Capacity to Receive and Disburse Benefits, is of record, send a memorandum to the VSO requesting recertification of a fiduciary.

(b) If no current VA Form 27-555, Certificate of Legal Capacity to Receive and Disburse Benefits, is of record, prepare an initial request for certification using VA Form 21-592, Request for Appointment of a Fiduciary, Custodian or Guardian.

(5) The following procedures apply for all other beneficiaries:

(a) If evidence of a judicial determination of incompetency or of appointment of a guardian by reason of incompetency is received, make a request for appointment of a fiduciary as provided in paragraph 12.05a(1). Additionally, if the person for whom the competency determination is requested is a veteran in receipt of benefits, the competency determination will also be referred to the rating board (par. 12.05a(2)).

(b) If the evidence submitted is other than a judicial determination of incompetency, follow the procedures established in paragraph 12.05b prior to referral for rating board consideration under 38 CFR 3.353 and the requirements of paragraph 54.01b. In these instances, apply due process procedures established in paragraph 14.37.

NOTE: VA examinations will not be requested in these cases. However, field examinations may be requested a determined necessary.

(c) For any other insurance beneficiary, prepare rating decisions as provided in paragraph 54.03.

(d) Upon final rating of incompetency, complete VA Form 21-592 and refer it to the VSO (par. 12.01) for formal certification in all cases.

(6) When certification or recertification of fiduciary is made, VA Form 27-555 is returned to the Adjudication Division for appropriate action on any running award.

(7) File the request for a competency determination, supporting evidence, rating decisions as to competency, and VA Form 27-555 in the claims folder (if any) after all regional office actions are completed. Return certified copies to the requesting Insurance Center. If there is no claims file, return the originals to the Insurance Center of jurisdiction.

f. **Hearing Requests.** If a hearing is requested after the RO&IC Adjudication Division prepares a rating proposing incompetency, that division will transfer the folder to the regional office having jurisdiction over the person's residence (per par. 14.36g). The regional office responsible for conducting the hearing will issue the formal rating as to competency, provide due process notification and send a certified copy of the formal rating to the requesting Insurance Center.]

30.10 ELIGIBILITY FOR VOCATIONAL REHABILITATION (38 U.S.C. CH. 31)

a. **General.** Upon receipt of VA Form 28-1900, Disabled Veterans Application for Vocational Rehabilitation, eligibility may generally be determined from a review of a current disability rating, if any, in the veteran's claims folder. Referral for a memorandum rating (par. 47.05) is, however, required under any of the following circumstances:

(1) VA Form 28-1900 is filed by a serviceperson who is awaiting discharge for disability.

(2) VA Form 28-1900 is filed by a veteran, but no claim for compensation was ever filed.

(3) VA Form 28-1900 and VA Form 21-526, Veterans Application For Compensation or Pension, were filed and both are in a pending status; and service department medical records adequate for memorandum rating purposes were received, but action on the claim for compensation was deferred pending receipt of an examination report or other necessary development.

b. **Service Personnel Awaiting Separation For Disability.** If a VA Form 28-1900 is filed by a serviceperson who is in a military hospital awaiting discharge from service (subpar. a(1) above), the application is accompanied by readily available service department medical records and, if available, a current hospital report. If additional specific records are required, request them from that hospital. After the memorandum rating is completed, duplicate all of the records furnished by the hospital for the claims folder, then return the originals to the hospital.

NOTE: Compensation granted under 38 U.S.C. 351 does not establish entitlement to benefits under 38 U.S.C. CH. 31.

30.11 DETERMINATION OF ELIGIBILITY TO GRATUITOUS FUNDS ON DEPOSIT IN PFOP

See Paragraphs 28.09 and 37.29.

30.12 ELIGIBILITY REQUESTS FOR MEDICAL CARE FOR SURVIVORS AND DEPENDENTS OF CERTAIN VETERANS (38 U.S.C. 613)—CHAMPVA

a. **General.** Eligibility requests from the Central CHAMPVA Center are made using VA form 10-3884 or VA Form 10-3884b, Exchange of Beneficiary Information and Request for Eligibility Data—CHAMPVA. The forms are submitted in duplicate.

NOTE 1: If a qualifying disability was certified to [Veterans Health Services and Research Administration (VHS&RA)] during the veteran's lifetime, further requests for the status of disability as of date of death, or whether death was service connected are not routinely made.

NOTE 2: Upon computer processing of an initial award of service-connected death benefits, information about potential entitlement to CHAMPVA benefits with instructions to apply at the [Central CHAMPVA Center], 1055 Clermont Street, Denver, Colorado 80220 is sent on VA Form 10-7952, Notice of Entitlement to Survivors and Dependent Children (F) to the payee spouse or child(ren).

b. **Authorization Responsibility**

(1) Authorization personnel complete the eligibility request verifying the relationship of the applicant(s) and the existence of a qualifying service-connected disability or death as follows:

(a) Use the criteria contained in 38 CFR 3.50 through 3.58 to establish the relationship of the claimant(s). Identify any established dependents by name, date of birth of child(ren), relationship, and helpless child or school child status (including the period for which school attendance is approved).

(b) The veteran has a permanent and total service-connected disability under the criteria of paragraph 47.14c(1).

(c) The veteran at the time of death had a permanent and total service-connected disability under the criteria of paragraph 47.14c(2).

or

(d) The veteran's death after separation from service is service connected (par. 34.06a).

(e) Death in service (see par. 34.05a).

NOTE: Disability or death compensation or DIC granted under 38 U.S.C. 351 or permanent and total disability compensation granted solely under 38 U.S.C. 360 does not establish entitlement under 38 U.S.C. 613.

(2) If the claimed service-connected disability or relationship is not established, the eligibility request will be annotated to that effect.

(3) When the eligibility request is completed, file the copy in the claims folder (and the DEA folder for any school child receiving Chapter 35, Educational Assistance). Return the original to the [Central CHAMPVA Center] for their control in accordance with [VHS&RA] RCS 10-1, section XXII, item No. 136-4. Back flap the file copy so it remains on top of all subsequent file material. Annotate the copy for the DEA folder "Notify Central CHAMPVA Center of any extension of dependency status or unscheduled termination of dependency (par. 30.12d)".

c. **Notification to Applicant.** Notice of decision of entitlement or nonentitlement is furnished directly to the claimant by the Adjudication Division. The Medical activity provides notification of the determination. However, if a notice of disagreement or substantive appeal is received as the result of denial of basic eligibility to medical treatment, the Authorization activity is responsible for furnishing the statement of the case and/or certification of appeal to the claimant.

[d. Notice to DM&S facility of subsequent change affecting eligibility. If dependency status is extended by school attendance beyond the date previously verified or dependency terminates earlier than the date furnished on the eligibility request, the authorization activity will promptly advise the Central CHAMPVA Registry Center, the date and nature of the change and the name and file number of the veteran and the dependent(s) affected.]

30.13 ELIGIBILITY FOR LOAN GUARANTY BENEFITS

a. Basic Eligibility Requirements

Basic eligibility exists when the veteran was separated under conditions other than dishonorable and:

(1) The veteran served on active duty for 90 days or more, any part of which was during World War II (September 16, 1940, through July 25, 1947), Korean conflict (June 27, 1950, through January 31, 1955), or Vietnam era (August 5, 1964, through May 7, 1975); or

(2) The veteran served on *continuous* active duty for 181 days or more, all of which occured after July 25, 1947, and before June 27, 1950; after January 31, 1955; and before August 5, 1964; after May 7, 1975, and before September 8, 1980 (if enlisted) or before October 17, 1981 (if officer); or

(3) The veteran served on *continuous* active duty for 24 months or the full period (at least 181 days) for which the veteran was called or ordered to active duty service which began after September 7, 1980 (if enlisted) or October 16, 1981 (if officer); or the veteran completed at least 181 days of active duty with a hardship discharge or a discharge for the convenience of the Government; or

(4) The veteran's discharge or release from active duty during the periods specified in subparagraphs (1), (2), and (3) above was for a service-connected disability; or

(5) The medical evidence shows that a discharge or release for a service incurred or aggravated disability could be granted.

b. Eligibility Determinations

The Loan Guaranty Division is responsible for determining eligibility to loan guaranty benefits. However, as required for that determination, the Adjudication Division having custody of the claims folder will make any of the following determinations upon request of the Loan Guaranty Division:

(1) A character of discharge determination (par. 14.01) if the veteran's discharge was not specifically under honorable conditions or was dishonorable.

(2) A determination of discharge for disability, subject to presumption of incurrence or aggravation, will be made as required under 38 CFR 3.315(b). A memorandum rating will be required if the issue has not been disposed of in a prior rating (par. 47.15) and a copy of the rating (current or prior) will be furnished the Loan Guaranty Division which originated the request.

c. Surviving Spouse or Spouse Applicant

When the applicant is claiming as the surviving spouse or spouse of a veteran, the Adjudication Division is responsible for determination of basic eligibility and the following subparagraphs apply.

(1) Veteran

(a) The veteran must have served in the Armed Forces of the U.S. (allied nations are not included—A.D. 851) at any time during the specified periods shown in subparagraph a above; and

(b) The veteran died in service or after separation from service provided such separation was under conditions other than dishonorable; and

(c) The veteran's death was the result of injury or disease incurred in or aggravated by service in line of duty which was rendered on or after September 16, 1940, regardless of the date of entrance into such service (A.D. 864); or

(d) The veteran meeting the service requirements of subparagraph a above has been listed for a total of more than 90 days as

1. Missing in action; or

2. Captured in line of duty by a hostile force; or

3. Forcibly detained or interned in line of duty by a foreign government or power.

NOTE: Death cases compensable under 38 U.S.C. 351 are not included.

(2) **Wife, Husband or Widow(er)**

(a) The wife meets the requirement contained in the definition of "wife" (38 CFR 3.50(a));

(b) The husband meets the requirement contained in 38 CFR 3.51(a) and (b);

(c) The widow(er) meets the requirement contained in the definition of "widow" or "widower" (38 CFR 3.50(b), 3.51(a) and (b));

(d) The veteran's widow(er) is unmarried (38 CFR 3.50(b)(2)); and

(e) The applicant [surviving spouse] is not an eligible veteran (prohibition not applicable to [spouse] claimants).

NOTE: Active duty for training does not meet the service requirement of subparagraph (1)(a) above even though compensation may have been payable for injury or disease incurred during such training duty. However, when the veteran had a prior qualifying period of active duty, death due to disability incurred or aggravated in a subsequent period of active duty for training or inactive duty training meets the requirements of subparagraph (1)(c) above. (OP. G.C. 1-67)

d. **Request for Certification.** Upon receipt of an application for loan guaranty benefits, the Loan Guaranty Division will request the Adjudication Division for a statement concerning the claimant's basic eligibility. The request will be forwarded to the office having jurisdiction over the claims folder.

(1) The request must include the name and address of the person making application for a certificate of eligibility and the deceased veteran's name and XC-number.

(2) If the XC-number is unknown, the rank, branch of service, dates of enlistment and discharge or death, and serial number must be furnished.

e. **Certification of Eligibility.** When basic eligibility is shown, a certification will be furnished to the requesting Load Guaranty Division on VA Form 26-1817, Request for Determination of Loan Guaranty Eligibility–Unmarried Surviving Spouses, and a copy filed in the claims folder.

NOTE: When application is made by a [spouse] based on the eligibility requirements stated in subparagraph c(1)(d) above, both the request for certification by the Loan Guaranty Division and the certification by the Adjudication Division will be made by memorandum or letter. VA Form 26-1817 will not be used in these cases.

(1) Not more than one certification of eligibility will be issued. If a certification has been issued by the Loan Guaranty Division in one office and a request for determination is received from the Loan Guaranty Division in another office, the second requesting office will be informed of the fact of prior certification and of the address of the office from which it was issued.

(2) The certification will be signed in the name of the Adjudication Officer by an authorizer or other designee.

f. **Notice of Noneligibility**

(1) If the foregoing certification cannot be issued because basic eligibility is lacking or a determination is pending, the originating office will be notified of the reason why the desired statement cannot be furnished. If the certification cannot be issued because of a legal bar, a determination as to service-connected death will not be made for this purpose as the issue is immaterial. If a determination is pending, the statement will be furnished promptly when the determination is made.

(2) The Loan Guaranty Division will inform the claimant of a determination of noneligibility, but the Adjudication Division in the office having jurisdiction of the XC-folder will be responsible for furnishing a statement of the case and certification of appeal upon notice of disagreement on denial of basic eligibility based on any adjudicative determination. (See pars. 18.16b and 18.23, this manual, and M26-1, par. 2.11c.)

g. **Development for Purposes of Certification.** If, upon receipt of a request for determination of eligibility, it is ascertained that a determination as to service-connected death and relationship has not been made and no legal bar is shown, action will be taken to effect the necessary determination.

(1) For the purpose of a certification, a rating as to service-connected death may be made without the filing of a formal claim for death compensation or DIC.

(2) If the claimant has not previously filed VA Form 21-534, Application for Dependency and Idemnity Compensation or Death Pension by [Widow/er] or Child, and information concerning marital history is not of record, the claimant will be requested

to furnish an affidavit setting forth the date and place of marriage to the veteran, and the date, place, and manner of dissolution of prior marriages, if any, of either party, together with evidence to establish these facts. If the [surviving spouse] remarried subsequent to the death of the veteran, record proof of dissolution of the subsequent marriage(s) must be submitted.

(3) If the only information required is to establish that the widow(er) has not remarried, this evidence should consist of the [surviving spouse's] statement on VA Form 21-4138 setting forth that she/he has not remarried since the date of the veteran's death.

(4) If the request is for a determination based on the eligibility requirements stated in subparagraph c(1)(d) above, and a claims folder is not in existence, a VA Form [00]-3101 will be prepared and sent to the appropriate branch of service for active duty personnel. Completion of VA Form [00]-3101 will include checking the "Service" box in item 3. "Loans (see item 21)" will be entered in item 1B. Item 21 will show "Include: Certification of listing for more than 90 days as missing in action, captured 1LOD by hostile force and/or forcibly detained or intered ILOD by foreign government or power." Any additional development required will be done concurrently with release of VA Form [00]-3101 by Adjudication. If required for timely handling, service data may be acquired by [ARS (Advanced Record System).]

(5) Originating office will be notified if a determination is to be delayed due to the necessity of developing additional evidence.

30.14 ELIGIBILITY FOR BURIAL IN A NATIONAL CEMETERY

a. **VA National Cemetery.** Entitlement to burial in a VA national cemetery requires that the former service member had to have been discharged or released from service under conditions other than dishonorable. The [ ] Director of a VA national cemetery is responsible for determining whether the deceased is eligible for burial there. When verification of service is required:

(1) The [ ] Director of the national cemetery will telephone the [Veterans Services Officer] of the regional office having jurisdiction of the claims folder and request the information needed in order to make a determination as to eligibility.

(2) When the location of the claims folder is not known (or there is doubt that the deceased has a VA file number) the [ ] Director will contact the regional office in proximity to the national cemetery where burial is requested for assistance in searching BIRLS.

(a) If the claims folder is located in another jurisdiction, the [ ] Director will be immediately informed of the location of the folder and the information in the BIRLS reply. The [ ] Director will be responsible for contacting the office holding the claims folder for any additional information required.

(b) In cases appearing to be upgraded discharges based on review of the claims folder or on the statement of the [ ] Director, a BIRLS inquiry will be made. If the BIRLS response shows "SEP REAS DRO" or "SEP REAS BEO," the Adjudication Division of jurisdiction will be requested to determine whether the veteran is entitled to VA benefits.

b. **Arlington National Cemetery.** Effective April 15, 1977, former members of the Armed Forces whose last period of service terminated honorably and who were separated for a physical disability (at least 30 percent under VA standards in effect at time of discharge) prior to October 1, 1949, are eligible for burial in Arlington National Cemetery. Also eligible are veterans awarded the Silver Star, Distinguished Service Cross, Navy Cross, Air Force Cross or the Purple Heart.

(1) In certain instances, the Army will have to ask the VA for assistance in determining whether the deceased is eligible for burial in Arlington National Cemetery.

(2) [Direct] all Army requests for eligibility information for burial in Arlington National Cemetery [ ] to the Cemetery Service, VA Central Office (41A).

(3) The Cemetery Service will attempt to identify the deceased's status through BIRLS. If the information cannot be thus obtained, the Cemetery Service will request the information by telephone from the Adjudication Division of the regional office of jurisdiction.

c. Regional Office Procedures

(1) Generally, burial eligibility information should not be released by anyone below the level of adjudicator.

(2) [Handle] requests for eligibility information [ ] on a priority basis by the Adjudication Division.

(3) [Make] replies to such requests [ ] as expeditiously as possible.

(4) If a claims folder is out of file, [make] an immediate expedited search. [ ]

(5) While written confirmation of eligibility information will not be furnished, copies of documents may be requested in rare instances.

CHAPTER 33. DEATH DUE TO HOSPITALIZATION, MEDICAL OR SURGICAL TREATMENT, EXAMINATION, OR TRAINING (38 U.S.C. 351)

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CHAPTER 33. DEATH DUE TO HOSPITALIZATION, MEDICAL OR SURGICAL TREATMENT, EXAMINATION, OR TRAINING (38 U.S.C. 351)

33.01 INITIATION OF CLAIMS

a. **Veterans in Receipt of Compensation Under 38 U.S.C. 351.** If it is indicated that the veteran's death resulted from the disability for which compensation was being paid under 38 U.S.C. 351 (38 CFR 3.800), send the claimant a VA Form 21-534, Application for Dependency and Indemnity Compensation or Death Pension By A Surviving Spouse or Child, or VA Form 21-535, Application For Dependency and Indemnity Compensation By Parent(s).

b. **Other Cases.** Send VA Form 21-534 or 21-535 to apply for benefits under 38 U.S.C. 351 under the following conditions:

(1) In response to a request;

(2) If an informal claim is filed for 38 U.S.C. 351 benefits; or

(3) Under instruction from the Chief Benefits Director, or the Director, Compensation and Pension Service (in which event make no reference to the law under which benefits may be payable).

33.02 CLAIM REQUIREMENTS

a. A claimant need only to submit a statement showing an intent to apply for benefits under 38 U.S.C. 351. If VA receives an informal claim, send the claimant the appropriate application form. A formal claim for death benefits is a claim for benefits under 38 U.S.C. 351. (38 CFR 3.154)

b. If a formal claim for benefits is received and entitlement under 38 U.S.C. 351 is ultimately established, the effective date of entitlement under 38 U.S.C. 351 is the date of the formal claim, regardless of the time period involved. If, however, the original claim was disallowed for other reasons; e.g., the claimant failed to submit evidence to establish relationship, the effective date of entitlement under 38 U.S.C. 351 is the date of the reopened claim. (38 CFR 3.400(i))

33.03 CENTRAL OFFICE DETERMINATIONS

a. **XC-Folder Request for Review.** The Chief Medical Director will forward to the Chief Benefits Director, ATTENTION: Director, Compensation and Pension Service (214D), copies of reports of investigation (VA Form 10-2633, Report of Special Incident Involving a Beneficiary) which indicate that death may have been due to circumstances contemplated by 38 U.S.C. 351. In such cases, when it appears that death benefits may be payable under 38 U.S.C. 351, the Director, Compensation and Pension Service will request temporary transfer of the XC-folder from the regional office having jurisdiction.

b. **Temporary Transfer of XC-Folder.** Upon request, forward the XC-folder to Central Office (par. 2.09) unless there are no survivors who could be entitled to DIC (dependency and indemnity compensation) benefits or if a favorable rating for survivors benefits has been or will be made under section 351 or 410 of title 38. If a folder is not transferred, notify Central Office (214D) as to the reason.

c. **Favorable Determination.** If Central Office determines entitlement to DIC under 38 U.S.C. 351, the XC-folder will be returned to the regional office with a notice of entitlement. Copies of the pertinent parts of the report of investigation (VA Form 10-2633) will be filed in the center section of the folder. If an application has been received, take appropriate rating and award action. If no application is of record, Central Office will instruct the regional office to send an application to the dependent who may be entitled. (See par. 33.01b(3).)

d. **Unfavorable Determination.** If a determination of nonentitlement is made by Central Office, the XC-folder will be returned to the regional office with notice that entitlement to benefits under 38 U.S.C. 351 has not been found. Copies of the pertinent parts of report of investigation will be filed in the center section of the folder. If a claim has been received, take appropriate rating and disallowance action. (See par. 33.09.)

e. **Disposition of Reports of Investigation.** Return VA Form 10-2633, Report of Special Incident Involving a Beneficiary, to the Office of the Medical Inspector (10A6).

33.04 REGIONAL OFFICE DETERMINATIONS

The regional office will make determinations as to:

a. Cases in which the veteran died while receiving compensation under 38 U.S.C. 351.

b. Cases in which the claimant has applied or indicated an intent to apply for benefits under 38 U.S.C. 351. In any such case, see par. 29.51 regarding development of 38 U.S.C. 351 claims and prohibition of requesting quality assurance investigative reports.

33.05 PROHIBITION AGAINST DUPLICATION OF BENEFITS

a. **Characterization of Tort Claim.** It makes no difference whether the award or settlement amount to the claimant is characterized as a settlement, compromise, administrative award, tort award, or judgment. For the purpose of this chapter, the term "judgment" encompasses all of the preceding terms. The prohibition against duplication of benefits applies whenever the claimant receives a sum of money or property to extinguish a legal claim arising from death of the veteran.

b. **Tort Claims Concluded Before December 1, 1962.** An administrative award or settlement which became final before December 1, 1962, is a bar to all further payments of death compensation or dependency and indemnity compensation under 38 U.S.C. 351. However, a court judgment which became final before December 1, 1962, is neither a bar to payment of death compensation or dependency and indemnity compensation under 38 U.S.C. 351 nor subject to offset, unless such a bar or offset is provided for by the terms of the judgment. (38 CFR 3.800)

c. **Tort Claims Concluded On or After December 1, 1962.** Regardless of the date of the incident on which the claim is based, the amount received by a claimant from a tort claim based on a veteran's death under 38 U.S.C. 351, is subject to offset until such time as an amount equal to the judgment has been recouped from the claimant's dependency and indemnity compensation. (38 CFR 3.800)

d. **Notice of Action on Tort Claim.** The tort claim against the government will be resolved by General Counsel in VA Central Office, the U.S. Attorney General, or District Counsel at the regional office level. The circumstances of the individual case determine which official is responsible for resolving the tort claim. In all cases resolved in favor of the claimant, notice of culminations of the tort claim will be referred to the Adjudication Officer of the regional office having jurisdiction of the claims folder.

e. **Deferral of Award Action.** DIC awards under 38 U.S.C. 351 are subject to offset effective the first of the month after the month during which the judgment becomes final. Therefore, defer a DIC award under 38 U.S.C. 351 if there is reason to believe a tort claim for damages may have been finalized. Do not defer the award just because a tort claim has been filed unless there is reason to believe it has been finalized.

f. **Entitlement of Other Beneficiaries.** If a judgment is made to or for two more persons, which involves a claimant subject to the 38 U.S.C. 351 offset, ascertain the individual distribution of the monies.

(1) The specific amount received by each individual, as distinguished from the technical or legal capacity of the person to whom payment is made, is the governing factor. This also applies to a person who has been paid in both an individual and representative capacity, such as a surviving spouse who receives a settlement payment as well as fees for administering the veteran's estate.

(2) If the claims folder is in Central Office under review, General Counsel will determine the distribution.

(3) If the claims folder is in the regional office when the question of distribution arises, the Adjudication Officer will request the District Counsel to ascertain the individual distribution of the judgment award or of the settlement or compromise payment. Forward the claims folder with the request.

g. **Effect on Pension.** No offset is required if a tort claim is concluded in favor of a claimant in receipt of pension or who is eligible for DIC under 38 U.S.C. 351 but continues to receive pension in lieu of DIC. However, the net proceeds of the judgment are countable income for pension purposess. (38 CFR 3.262(i); 3.271(g))

h. **Effect on Parent's DIC.** If a tort claim is concluded in favor of a parent in receipt of DIC, no offset is required. This rule applies if the veteran's death was service-connected or if entitlement to DIC arose solely under 38 U.S.C. 351. However, the net proceeds of the judgment are countable income for DIC purposes. (38 CFR 3.262(i))

i. **Predetermination Notice.** Do not adjust an award to count the proceeds of a judgment with affording predetermination notice unless the claimant is the source of information and understands how the judgment will affect the amount of benefits payable.

33.06 AWARDS SUBJECT TO OFFSET

a. **General.** If withholding is required under 38 U.S.C. 351, make the first offset of the entire benefit to the recipient effective the first of the month after the month during which the judgment becomes final. If, however, the terms of the judgment specifically provide for a different date of offset, the terms of the judgment control. *NOTE: Offset is not required if the terms of the judgment, settlement, or compromise specifically provide for waiver of offset by VA.*

(1) **Administrative Awards.** Administrative awards made by VA are considered final on the date of approval.

(2) **Attorney General Agreements.** A settlement or compromise entered into by the Attorney General after suit has been filed is considered final when the agreement is approved by the court, notwithstanding that a final order of dismissal may not be entered until a later date.

(3) **Finalization Date Uncertain.** If after reviewing the evidence of record, there is any question as to the date the tort award or settlement became final, request clarification from the District Counsel.

b. **Amount of Offset.** The total amount to be recouped will be the gross amount of the judgment attributable to the award beneficiary. (See par. 33.05f.)

c. **Retroactive Adjustments.** Do not offset DIC payable for any period before the month following the date on which the settlement or judgment becomes final. Action to adjust a 38 U.S.C. 351 award for receipt of a settlement or judgment creates a 97K recoupment balance in the C&P master record. If VA receives final notice of judgment after a DIC award under 38 U.S.C. 351 is already running, VA must offset retroactive to the first of the month following the month of the judgment. This retroactive adjustment to prevent duplication of benefits will create a 30B accounts receivable in the C&P master record in addition to the 97K recoupment balance, however, the 97K recoupment balance will be reduced by the amount of the 30B accounts

receivable. After processing the retroactive award, the sum of the 97K recoupment balance and the 30B accounts receivable should equal the amount of the judgment.

EXAMPLE: A judgment is final on June 15, 197. The rating board later grants DIC effective March 16, 1987, under 38 U.S.C. 351. Do not offset any portion of the claimant's DIC benefits prior to July 1, 1987, the month following the date the judgment became final.

33.07 PREPARATION OF AWARDS

The benefit payable under 38 U.S.C. 351 is dependency and indemnity compensation. (38 CFR 3.800(b)). The following provisions apply specifically to 38 U.S.C. 351 awards:

a. **Entitlement Code.** If the veteran had wartime service, use the entitlement code for the latest entitling war period; otherwise, use the peactime entitlement code. (See pars. 15.30 and 38.09.)

b. **Special Law Code.** Enter special law code 07 in the SLC field on the 401 screen if DIC is granted because of 38 U.S.C. 351. Use special law code 07 whether or not offset is required. (See par. 15.32.)

c. **Withholding for Offset.** Enter the amount of offset as a type 7 withholding in the DED-OFFST field on the 403 screen. (See par. 15.34b.)

d. **Total Amount to be Recouped.** Enter the gross amount of the judgment in the TORT AWARDS field on the 401 screen. The maximum amount that can be entered in the TORT AWARDS field is $999,999.99. If the tort award is $1,000,000 or more, enter "$999,999.99" on the 401 screen and refer the file to Finance for entry of the remaining recoupment balance. Maintain close control to ensure the master record recoupment balance is correct after the Finance transaction has been processed.

e. **Changes in Recoupment Amount.** Once a recoupment balance has been established in the master record, it cannot be changed by amended award action. If the recoupment balance must be changed, document the claims folder and send a routing slip to Finance requesting that the recoupment balance be changed. Maintain close control of the case to verify that the change was properly posted to the master record.

33.08 NOTICE OF AWARD

a. **Dictated Letter Required.** The presence of special law code 07 in the award automatically suppresses the Target award letter. Therefore, prepare a dictated letter but do not refer to the award as arising out of 38 U.S.C. 351 unless there was a specific claim thereunder. State in the dictated letter that the claimant is entitled only to DIC and that there is no independent entitlement to ancillary benefits (unless there is entitlement to ancillary benefits based on eligibility requirements otherwise met without regard to 38 U.S.C. 351). (See par. 33.10.)

b. **Notice of Offset Requirement.** If the award does not provide for offset, inform the claimant of the offset requirements of the law. Include this information whether or not there is any indication that a tort claim has or will be filed.

c. **Zero Rate Awards.** If a total offset is in effect until an amount equal to the settlement or judgment has been recouped, advise the claimant to keep VA informed of any changes of address.

33.09 DISALLOWANCES

a. **Preparation of Disallowance.** Prepare a formal disallowance of a 38 U.S.C. 351 claim (when required under par. 16.02) in accordance with paragraph 16.05. Regardless of the disallowance reason, annotate the disallowance sheet whether the rating granted or denied the 38 U.S.C. 351 claim.

b. **Disallowance Letter.** In the absence of a specific claim for benefits under 38 U.S.C. 351, do not refer to that section or the circumstances which warranted the rating in the disallowance letter. Use the Target disallowance letter if the claim is denied for another reason; e.g., relationship not established. If there was a specific claim under 38 U.S.C. 351, suppress the Target letter and prepare a dictated disallowance letter.

33.10 ENTITLEMENT TO ANCILLARY BENEFITS

There is no entitlement to the following ancillary benefits if the veteran's death was due to disability granted under 38 U.S.C. 351:

a. Dependents' Educational Assistance (par. 10.11).

b. CHAMPVA–38 U.S.C. 613 (par. 30.12).

c. Loan Guaranty to Surviving Spouse (par. 30.13c).

d. Special Allowance–38 U.S.C. 412a (par. 40.01).

e. Special Allowance–Section 156, Pub. L. 97-377 (par. 40.23g).

f. Service-Connected Burial Allowance (par. 43.03g).

CHAPTER 35. PHILIPPINE CASES

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CHAPTER 35. PHILIPPINE CASES

35.01 SCOPE

This chapter prescribes procedure for use in the adjudication of:

a. All claims for death pension, compensation, or DIC emanating from the Republic of the Philippines, and

b. All claims for such benefits, regardless of origin, by dependents of any deceased veteran who served in the following 38 CFR 3.8 and 3.9:

(1) Regular Philippine Scouts (enlisted prior to October 6, 1945), and Insular Force of the U.S. Navy.

(2) Special Philippine Scouts (enlisted on or after October 6, 1945, under Pub. L. 190, 79th Cong.)

(3) Commonwealth Army of the Philippines (while such forces were included in the Armed Forces of the United States, from July 26, 1941, through June 30, 1946.)

(4) Guerrilla groups prior to July 1, 1946.

[c. Jurisdiction of Philippine cases based on service listed in subparagraphs b(2), (3), and (4) above is restricted to the Manila regional office. (See pars. 2.02b and 2.03c.) The jurisdiction of claims based on service in subparagraph b(1) above or with the Armed Forces of the United States is determined by the area of residence jurisdiction. (See par. 2.02e.)]

35.02 ABBREVIATIONS

Whenever used, the abbreviations listed below [ ] refer to:

AFWESPAC..... Armed Forces Western Pacific

AGRD..... Adjutant General Records Depository (formerly Recovered Personnel Division)

AUS ..... Army of the United States

BC ..... Bureau of Constabulary (Japanese puppet organization)

CIC ..... Counter Intelligence Corps

GAD ..... Guerrilla Affairs Division

HNDF ..... Headquarters, National Defense Forces of the Philippines

MD ..... Military District

MPA ..... Missing Persons Act—Public Law 490, 77th Congress

NCS ..... No Casualty Status

OSI ..... Office of Special Investigation (U.S. Air Force Organization)

PA ..... Philippine Army (Commonwealth Army of the Philippines)

PHILCOM ..... Philippine Command

POW ..... Prisoner of War

PS ..... Philippine Scout

SR&D ..... Status, review and determination

USAFEE ..... United States Armed Forces in the Far East

35.03 CORRESPONDENCE

a. Correspondence Addressed to Residents in the Republic of the Philippines

(1) **Number of Copies.** [Prepare] correspondence addressed to residents of the Philippines [ ] as follows:

1 original
1 [yellow] file copy
Extra copies only as specifically needed

(2) **Transmission.** Letters to residents of the Philippines may be sent via airmail directly to the addressee.

b. Correspondence With the Philippine Embassy, Washington, DC

(1) [Prepare] replies to correspondence received directly from the Philippine Embassy [ ] over the signature of the Adjudication Officer and address [them] to:

Bureau of Consular Affairs
The Department of State
Washington, DC 20520

ATTENTION: Federal Benefits Section

(2) Include the following statement [in such replies]:

"The Philippine Embassy may be informed ...."

c. Correspondence With the Philippine Department of State, Manila[ ]

(1) Replies by other than the Manila regional office to correspondence received from the Philippine State Department, Manila, should be directed as provided in subparagraph b above.

(2) Replies made by the Manila regional office may be addressed directly to the originator and released locally as provided by U.S. Embassy, Manila, directives.

35.04 PHILIPPINE RED CROSS

The Philippine Red Cross is not an accredited service organization for VA purposes. There is no American Red Cross organization in the Philippines. However, as the result of an agreement between the Philippine Red Cross and the American Red Cross, claimants residing in the Philippines, who desire to be represented by the American Red Cross, may execute a power of attorney in favor of the American Red Cross. Upon receipt of such a power of attorney, [furnish] copies of correspondence [ ] only to the office of the Field Director, The American Red Cross WRO, Washington, DC 20421. [Do not forward] duplicate copies to the local chapter of the Philippine Red Cross.

35.05 SERVICE INFORMATION

a. General

(1) The service information referred to in this paragraph relates to:

(a) Service with the Commonwealth Army of the Philippines on or after July 26, 1941, and prior to July 1, 1946 (during which period that force was a part of the Army of the United States by virtue of the Executive order of the President, dated July 26, 1941), and

(b) Service on and after December 7, 1941, as a Regular Philippine Scout.

(2) [Take] final action (award or disallowance, as well as certification of pending appeals) on claims based on service in the Philippine Army [ ] only on the basis of certifications of service made by the Department of the Army on or after February 11, 1950.

(3) Recertifications of service are not required for Navy cases or Regular Philippine Scouts, except regarding 14th Infantry, AUS cases. (See par. 35.07.)

b. **Source.** Requests for service, medical, death and loyalty data in new claims processed through the Manila regional office are made by the Adjudication Division of that office. If a new claim is received in [a regional office] without having been processed through the Manila regional office, and an initial or supplemental request for information is required, [prepare] the request [ ] as specified below. [(See par. 35.01c.)]

(1) **Preparation of VA Form 21-3101, Request for Information.** Under "Type of Claim" [enter] the appropriate legend [ ] as follows, depending upon the information desired in the particular cases:

(a) "PHILIPPINE-DEATH-SERVICE."

(b) "PHILIPPINE-DEATH-LOYALTY."

(c) "PHILIPPINE-DEATH-MEDICAL."

(2) **Loyalty Data.** [Do not make] a request for a loyalty check based on the possibility of loyalty board proceedings [ ] when no derogatory information is contained in a report previously prepared by the AGRD. In cases processed in the Manila regional office a loyalty check will not be requested when neither the veteran's [nor] claimant's name appears in the microfilm file of loyalty board proceedings.

(a) [If] claims are processed at other than the Manila regional office, [transmit] a photostat of the claim, including VA Form 21-4169, Supplement to VA Forms 21-526, 21-534 and 21-535 (for Philippine Claims), [ ] by [OF 41] to the Manila regional office for review of the microfilm index of loyalty status files. Positive or negative search data, including any identifying numbers shown in the microfilm index, will be annotated on the [OF 41] by the Manila regional office before returning it to the requesting regional office.

1. While checking the microfilm index of loyalty status files, the Manila regional office shall also make an index search to determine if claimant had previously forfeited entitlement, or should be considered for forfeiture, to benefits by reason of fraudulent action in another claim. The results of the index search, positive or negative, should also be annotated on the [OF 41] requests submitted from other regional offices.

2. If the claimant has been identified by index search as a person who has assisted another in a false claim warranting forfeiture consideration or if positive search data is found in the loyalty microfilm index, [transfer] the claims folder to the Manila regional office for further development relative to forfeiture. [If appropriate, the Manila office will submit the claims folder] to Director, Compensation and Pension Service [(214D)] for forfeiture determination.

(b) [If] information concerning loyalty is required under paragraph 7.08, [prepare] VA Form [21-]3101 for transmittal to Washington National Records Center, GSA, Washington, DC 20409. [Show] any identifying numbers on the microfilm [ ] in the top margin of VA Form [21]-3101 so that loyalty status files can be located without further search of the alphabetical index.

(3) **Loyalty and Service Data.** If questions concerning loyalty and service are involved in the same case, [prepare] separate sets of VA Form [21]-3101 [ ] for separate mailing.

NOTE: In the case of a living veteran, [do] not [ ] routinely request [loyalty data] when the Armed Forces have certified the veteran had recognized service as a "civilian Guerrilla" only (par. 35.06a). In the absence of derogatory evidence to the contrary [accept] the certification of recognized guerrilla service [ ] as a determination of loyalty during the period of service shown.

c. **Conflicting Service or Date of Death Information.** [If] the VA has obtained information deemed reliable but which conflicts with information relating to service, cause or date of death or circumstances of injury in service obtained from the service department, [bring] the conflicting information obtained by the VA to the attention of the U.S. Army Reserve Components Personnel and Administration Center (AGUZ-SAD), 9700 Page Boulevard, St. Louis, Missouri 63132 for reconsideration.

(1) If the service department makes a redetermination, [furnish] a statement [ ] on supplemental VA Form [21]-3101 that the redetermination supersedes determinations previously submitted.

(2) [If] the VA makes a finding of death for pension, compensation or DIC purposes, which is not in agreement with that made by the service department, [notify] the U.S. Army Reserve Components Personnel and Administration Center (AGUZ-SAD), by letter of the date of death as determined by the VA and the basis on which the determination was made.

NOTE: The provisions of this subparagraph regarding service data are not applicable when evidence is received which purports to establish civilian guerrilla service, inasmuch as guerrilla rosters have been closed and will not be reopened.

d. **Death Certificates Signed by Basilio Hernandez.** Death certificates signed by Basilio Hernandez or other officers of the Philippine Army were issued at the request of next of kin and were based on their affidavits which were frequently false or incorrect. Such certificates are not to be accepted as official reports of death unless verified by the service department. When so verified, [accept] the date of the certificate [ ] as the date of the report of death.

e. **Arrears of Pay Data.** [Request] information regarding the distribution of arrears in pay of persons who served in the Philippine Army, Regular Philippine Scouts or U.S. Army [ ] on VA Form [21]-3101.

35.06 GUERRILLA SERVICE

a. **Definition of Guerrilla.** A **"guerrilla"** is a person who served in a unit which resisted the Japanese after capitulation of the Armed Forces.

(1) Such unit must have been under a commissioned officer of the U.S. Army, Navy, or Marine Corps, or under a commissioned officer of the Philippine Army recognized by and cooperating with the United States forces.

(2) A guerrilla who also had service in the Armed Forces of the United States (including Regular Philippine Scouts) or the Philippine Army is referred to as a "USAFFE guerrilla."

(3) A person who [provided] no service other than with a guerrilla unit is referred to as a "Civilian guerrilla."

b. **Service Requirements.** Guerrilla service is classified into three categories:

(1) Service recognized by GAD as manifested on a reconstructed troop roster, casualty roster, or individual letter of recognition. This type is usually certified by the service department as "Recognized guerrilla service," and is compensable.

(2) Guerrilla service not recognized by GAD, but [served] in a guerrilla unit under the command of a commissioned officer of the U.S. Armed Forces (including the Regular Philippine Scouts) or in the Philippine Army. This type will be certified by the service department as "Unrecognized guerrilla service under _____" (naming the officer and, if the officer was a member of the Philippine Army, giving the officer's rank and organization). This service is compensable only if the person was a former member of the U.S. Armed Forces (including the Regular Philippine Scouts) or the Philippine Army.

(3) Guerrilla service not recognized by GAD and not [served] under a commissioned officer of the U.S. Armed Forces or Philippine Army is certified as "Unrecognized anti-Japanese activity," and is not compensable. However, when the person was a former member of the U.S. Armed Forces (including the Regular Philippine Scouts) or the Philippine Army and the injury or death is found to have been inflicted by the Japanese because of unrecognized anti-Japanese activity, it will be considered incurred in active service for VA benefits. ([38 CFR 3.9(b)])

c. **One-Day Recognition.** Recognition for 1 day is sometimes given by the service department to a person who is listed on a casualty roster. (See subpar. [b](1) above.) The date of casualty may have been prior to the beginning date of recognition or after the terminal date of recognition of the unit. The certification by the service department in such cases will be accepted as establishing active service for the 1 day.

d. **Guerrilla Rosters.** The reconstructed guerrilla rosters were closed as of June 30, 1948. On August 9, 1949, the President of the United States informed the President of the Philippines that the Philippine guerrilla rosters would not be reopened.

35.07 14TH INFANTRY, ARMY OF THE UNITED STATES

No recognition will be given to service in the 14th Infantry, AUS (distinguished from other 14th Infantry organizations) unless an affirmative recertification dated August 1, 1953, or thereafter, is of record. When a previous certification of 14th Infantry, AUS, service is withdrawn, adjudication action on pending claims and running awards will depend upon whether there was other compensable service in the Philippine Army, Philippine Scouts, or guerrilla organization.

35.08 ELIGIBILITY FOR BENEFITS

a. **United States Army.** Dependents of deceased members of the U.S. Army are eligible for all benefits provided by existing law for the particular service involved, including death pension under 38 U.S.C. 541 and 542. Death pension or compensation, DIC and burial allowance are *payable in dollars.*

b. **Philippine Scouts**

(1) **Regular Philippine Scouts** who enlisted prior to October 6, 1945, are entitled to the same benefits as U.S. Army [personnel] and their dependents are eligible under all applicable laws. Death pension, compensation, or DIC and burial allowance are *payable in dollars.*

(2) **Special Philippine Scouts** whose only service commenced on or after October 6, 1945, under section 14, Public Law 190, 79th Congress, are subject to the limitations contained in 38 U.S.C. 107(b), and therefore their dependents are entitled to benefits *only if death is service connected.* Neither death pension nor burial allowance is payable. Death compensation and DIC are payable at a rate *in Philippine pesos* which is equivalent to $0.50 for each dollar authorized to be paid under the applicable law (38 U.S.C. 107(b)).

c. **Commonwealth Army of the Philippines (Philippine Army)**

(1) The organized military forces of the Government of the Philippines were ordered into the service of the Armed Forces of the United States by the President on July 26, 1941. However, this order was not effective from the date of its issuance but rather, "From and after the dates and hours, respectively, indicated in orders to be issued from time to time by the General Officer, United States Army, designated by the Secretary of War." Service of the Philippine Army in the Armed Forces of the United States was terminated June 30, 1946, by military order of the President dated July 1, 1946.

(2) Dependents of a person whose sole service was in the Philippine Army are eligible to receive death compensation or DIC and, since April 25, 1951, burial allowance, but are *not entitled to death pension.*

(a) Death compensation or DIC and burial allowance are payable at a rate *in Philippine pesos* which is equivalent to $0.50 for each dollar authorized to be paid.

(b) However, if the service department certifies that Philippine Army service was followed by AUS service to the date of death and death was the result of the AUS service, death compensation, DIC and burial allowance are payable in dollars and income is computed in dollars.

d. **Guerrilla Service.** Dependents of persons who [provided] acceptable guerrilla service either as "USAFFE guerrillas" or "Civilian guerrillas" are eligible to receive death compensation or DIC and, since April 25, 1951, burial allowance. They are *not entitled to death pension.* Death compensation, DIC and burial allowance are payable at the rate *in Philippine pesos* which is equivalent to $0.50 for each dollar authorized to be paid under the applicable law. (38 U.S.C. 107(a))

35.09 REQUESTS FOR FIELD EXAMINATIONS

a. Field examinations may be requested for development of such aspects as service connection for cause of death, marital status, forfeiture, dependency and, when in order, further development of the question of loyalty.

b. No field examination will be requested in Philippine cases:

(1) To investigate the facts of military service such as to obtain evidence whether the alleged serviceman was a veteran within the meaning of laws administered by the VA, except in special cases when the request will be approved personally by the Adjudication Officer or designee.

(2) To secure any evidence obtainable by use of VA Form [00]-3101 and other forms of correspondence, including type, period, interruptions in and manner of termination of military service; clinical records of United States or Philippine Army hospitals, and arrears in pay claims, except when the Adjudication Officer or designee finds that the required evidence cannot be secured in this manner.

35.10 FORFEITURE OF RIGHTS; CLEARANCE OF PERSONS WHO RESIDED IN ENEMY TERRITORY

a. **Clearance Required.** Loyalty clearance will be obtained, as necessary under 38 U.S.C. 3108 and 3504, as to claimants who resided in the territory of or under the control of any enemy of the United States, in accordance with provisions of paragraph 7.08.

b. **Membership in Pro-Japanese Organizations.** A showing of membership in a pro-Japanese organization on or after December 7, 1941, will be sufficient evidence to justify submission of the question of forfeiture.

c. Derogatory Reports

(1) When the claimant or the veteran and the name appearing as the subject of a derogatory report are identical and not common in the Philippines, and if there is nothing of record to disassociate the claimant or the veteran from the subject, submission will be required, with a statement therein that "It appears the veteran (or claimant) and the subject of the derogatory report are identical."

(2) In those cases in which the name is common in the Philippines, or in which the similarity of names is only because the first name of the subject of the derogatory report is shown by an initial which corresponds to the first letter of the claimant's or veteran's given name and there is no information of record which indicates the probability that the subject and the veteran or claimant are one and the same, it will be considered that they are not identical. This fact will be endorsed on the report and signed by the unit chief.

(3) In arriving at a determination, consideration will be given to the evidence of record, such as age, place of birth, place of residence, sex, education, normal occupation, standing in the community, and nationality of the veteran or claimant, in relation to the information contained in the derogatory report. Matters of common knowledge, local customs, and other factors will also be given due consideration. If there is doubt, further information will be obtained by field examination (pars. 7.07 and 35.09).

d. **Procedure Involving Forfeiture of Benefits.** Forfeiture of benefits under 38 U.S.C. 3503, 3504 and 3505 will be accomplished in accordance with [38 CFR 3.900] series. The procedures relating to forfeiture in chapter 20 are applicable generally to Philippine cases. These cases are considered "foreign cases" under this procedure.

35.11 DOMESTIC RELATIONS

The procedure in paragraph 8.05a is applicable to Philippine cases of tribal marriages. A ceremonial Mohammedan marriage will be proved in the same manner as Christian marriages. Domestic relations questions which require legal opinions will be referred to the General Counsel, as provided in paragraph 8.03c.

35.12 DEPENDENCY OF PARENTS

a. **General Policy.** There is no conclusive presumption of dependency in claims of residents of the Philippines. However, the provisions of [38 CFR 3.250] relating to general policy are for application. Dependency will be [held to exist when the income of the parent(s) is insufficient to provide reasonable maintenance. The economy of the locality in which the parent resides is to be taken into consideration.

[b.] **Credit for Dependents.** [In all cases, the claimant must furnish original or certified copies of birth certificates, marriage certificates, divorce decrees, etc., to claim credit for dependents.

c.] **Contributions.** Actual contributions of any character by adult members of the immediate family, who reside outside the claimant's household, will be considered as income. When contributions are made by members of the family residing within the household, only so much thereof will be considered income as exceeds the value of room and board furnished such members.

[d.] **Arrears in Service Pay.** Entitlement of the claimant to arrears in service pay of the veteran will be considered in determining the date of commencement of death benefits based on death in service under the provisions of 38 U.S.C. 3010(j) (see par. 41.13), but will not be considered as income for the year in which received.

[e.] **Pension Paid by the Philippine Veterans Board.** Pension is payable by the Philippine Veterans Board to surviving spouses and minor children or indigent parents of veterans of the Philippine Army and guerrilla organizations, provided such persons are not receiving compensation from the VA.

(1) The parents are entitled to this pension only if there is no surviving spouse or child. Pension received from the Philippine Veterans Board is to be considered as income in determining dependency.

(2) If the parent claimant states that application has been made for Philippine Veterans Board pension and the amount would be material in determining dependency, the Manila regional office will request information as to the amount of pension received and the beginning and ending dates. When claims are filed in WRO, a letter will be addressed to the Director, Manila regional office, requesting information as to amounts of and dates of payment.

(3) When compensation is authorized to parents in receipt of Philippine Veterans Board pension, the award will be prepared with the following statement included in "Remarks": "In receipt of Philippine Veterans Board pension." The Manila regional office will notify the Philippine Veterans Board when awards are made by the VA. WRO will furnish a copy of such awards authorized by that office to the Manila regional office, which will notify the Philippine Veterans Board.

[f.] **Development of Evidence.** When information contained in the claim and supporting papers is not sufficient, the claimant will be requested to furnish additional evidence. Field examinations will be requested when the evidence submitted is so conflicting that personal contacts are required to explain the discrepancies and ascertain the facts.

[g.] **Reconsideration of Previous Determinations.** Determinations previously made will not be reviewed unless a request for reconsideration or an appeal is filed.

(1) If it is determined upon review that dependency has been established under existing criteria, an award will be authorized, if otherwise in order. The effective date of such award will be fixed in accordance with governing laws and regulations.

(2) If entitlement is established solely by reason of a change in criteria approved by the Administrator, the award will not be effective prior to the date of such change.

35.13 INCOME OF PARENTS—DIC

The provisions of [38 CFR 3.251] are applicable to claims for DIC by parents residing in the Philippines, except that when the claim is based on service as a Special Philippine Scout, guerrilla, or member of the Commonwealth Army of the Philippines:

a. Payment will be made in pesos at a rate equivalent to $0.50 for each dollar authorized.

b. The dollar limitations pertaining to annual income will apply at a rate in pesos equivalent to $0.50 for each dollar;

c. The value of Philippine pesos for VA purposes will be a rate established by the Chief Benefits Director.

35.14 EVIDENCE

Only original affidavits (other than those on standard Government forms) will be accepted in support of a Philippine claim. When mimeographed, photocopied, or printed forms of affidavits (other than standard Government forms) are submitted, the claimant will be advised that they cannot be accepted as evidence in the claim.

35.15 LETTERS ALLEGING NONENTITLEMENT

When letters, anonymous or signed, are received alleging that a payee is not entitled to the benefit being paid, consideration will first be given to the question of whether payments should be interrupted.

a. **Interruption of Payments.** If the letter contains specific assertions of fact and not mere generalities and it appears that the writer has knowledge of the circumstances, all necessary development including a field examination, if required, will be completed. Whenever developed evidence establishes a factual basis for award suspension, the due process procedures in paragraph 20.03 will be applied in cases subject to forfeiture; the procedures in paragraph 14.36 will be applied in all other cases.

b. Noninterruption of Payments. If the letter contains mere generalities, not requiring development, the adjudicator will annotate the letter "NAN," date and initial it, and file it in the XC-folder.

35.16 REQUEST FOR APPOINTMENT OF FIDUCIARY FOR CHILD PENDING DETERMINATION OF SURVIVING SPOUSE'S ENTITLEMENT

When there is a surviving spouse with a child or children and an award is to be made to the child(ren) pending the outcome of a field examination in order to determine the surviving spouse's entitlement or continued entitlement, VA Form 21-592, Request for Appointment of a Fiduciary, Custodian, or Guardian, will be prepared for the child(ren) and forwarded with the request for field examination as provided in chapter 12. This procedure will be followed (but is not restricted to such situations) when it appears that surviving spouses with children whose claims are still pending or surviving spouses who are receiving pension, compensation or DIC for themselves and their children are conducting themselves in such a manner as to warrant denial of benefits. These provisions are not for application in Improved Pension cases when children are in custody of the surviving spouse as no award for the children may be made without a determination of the surviving spouse's entitlement.

35.17 RECOGNITION OF ALLEGED SERVICE DENIED OR WITHDRAWN

When recognition of alleged service is denied or a former recognition is withdrawn, the claim, if pending, will be disallowed or a running award will be discontinued effective date of last payment. The appeal paragraph will *not* be included in the notice to the claimant of the action taken under this paragraph.

35.18 TRANSFER OF FOLDERS TO AND FROM MANILA REGIONAL OFFICE

Preceding any transfer to or from the Manila regional office of a claims folder for an account payable in dollars (par. 35.08), entry of a TR23 must be made in order to effect the change of station and to terminate and change the Hines DPC account to a Manila no-pay record under station 58 or to terminate the statistical no-pay account, as appropriate.

a. Transfer to Manila

(1) **Running Awards.** Computer processing of a TR23 establishes a future date stop payment effective the first of the next month, and Msg code 620, TRFD TO MANILA—DLP ( ) MANILA NO-PAY RECORD ESTABLISHED, is generated to the Manila regional office as notice of the pending transfer.

(a) Unless terminated by other input action, such account remains in a pay status during the month in which the message is issued.

(b) When the claims folder is received in the Manila regional office, it will be referred to the Adjudication Division for association with Msg 620 and preparation of an award for payment through their local disbursing office from the generated date of last payment.

(2) **Suspended Awards.** Processing of a TR23 against a suspended record terminates the account DLP. Msg code 618, TRANSFERRED TO MANILA-TERMINATED DLP, is generated and referred to the Manila regional office for association with the claims folder and Adjudication review and preparation of reopened award, as appropriate.

(3) **Terminated Awards.** A change of station (TR23) processed against a terminated record will change the station number and transfer of any receivable.

b. Transfer From Manila

(1) **Running Awards.** TR23 processed against a Hines DPC station 58 statistical no-pay record, terminates that record effective as of the first of the month in which it is processed, and Msg code 623, STOP PAYMENT PROCESSED—DLP ESTABLISHED, will be furnished to the receiving station.

(a) Manila regional office will prepare VA Form 21-8046, Payment Notice (Stop-Suspend-Resume) (in duplicate), as a "stop pay" action. The duplicate will be used to discontinue payments effective DLP and the original (after processing for entry to the Hines DPC), annotated to indicate the actual date of last payment, will be filed in the claims folder prior to transfer.

(b) Upon receipt of the claims folder and association with the Msg 623 in the receiving station, Adjudication will prepare a reopened award from the effective date as indicated on VA Form 21-8046 and refer the case by VA Form 3230, Reference Slip, to the Input activity for entry of the award and of rating data as required.

(2) **Suspended Awards.** The transfer of a Manila case in suspended status will be accomplished as provided above, except that the date of termination will be the suspense date. In such cases, *the reason for the suspense* as well as DLP will be clearly stated on the VA Form 21-8046 in the file. The receiving station will prepare a reopened award only after review and determination of eligibility.

(3) **Terminated Awards.** Only a change of station transaction is required.

(4) **Accounts Receivable.** Records existing against any case to be transferred from Manila will be included with the transfer of the claims folder.

c. **Transfer of Station 69 No-Pay Account Cases From WRO to Manila.** WRO will prepare VA Form 21-8046 (in duplicate) as a "stop pay" action. The duplicate will be used to discontinue payments effective *DLP* and the original (after processing for entry to the Hines DPC), annotated to indicate the actual date of last payment, will be filed in the claims folder prior to transfer. See chapter 17[ ] for procedures specific to the Target System.

CHART A. VA BENEFITS IN THE PHILIPPINES

Type of Service	Disability Benefits			Death Benefits				Income Limit and Dependency Determination
	Compensation	Pension	Clothing Allowance	Compensation or DIC	Pension	Burial Allowance	Burial Flag	
Armed Forces of the United States	Yes-dollars	Yes-dollars	Yes-dollars	Yes-dollars	Yes-dollars	Yes-dollars	Yes	Dollars
Regular Philippine Scouts–Enlisted prior to 10/6/45 and Insular Force of the U.S. Navy	Yes-dollars	Yes-dollars	Yes-dollars	Yes-dollars	Yes-dollars	Yes-dollars	Yes	Income: Dollars Dependency: Pesos
Special Philippine Scouts–Enlisted between 10/6/45 and 6/30/47, PL 190, 79th Cong.	Yes (since 5/27/46) Payments in pesos	No	Yes-pesos	Yes (since 5/27/46) Payments in pesos	No	No	No	Pesos
Commonwealth Army of the Philippines while such forces were in the Armed Forces of the United States (7/26/41-6/30/46)	Yes (since 2/18/46) Payments in pesos	No	Yes-pesos	Yes (since 2/18/46) Payments in pesos	No	Yes (since 4/25/51) Payments in pesos	Yes (since 4/25/51)	Pesos
Guerrilla Service prior to 7/1/46 (Reconstructed Roster closed 6/30/48)	Yes (since 2/18/46) Payments in pesos	No	Yes-pesos	Yes (since 2/18/46) Payments in pesos	No	Yes (since 4/25/51) Payments in pesos	Yes (since 4/25/51)	Pesos

CHAPTER 36. CONTESTED CLAIMS

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CHAPTER 36. CONTESTED CLAIMS

36.01 IDENTIFICATION OF CONTESTED CLAIMS

a. **Definition.** The provisions of this chapter are applicable to claims filed by two or more persons, [ ] when the allowance of one claim would necessitate disallowance of the other claim or payment of a lesser benefit, and one claimant contests the allowance of that benefit to the other claimant. [ ]

b. **Automatic Contested Claims.** Formal claims for the same benefit received from two [persons] alleging [status as] legal [widow(er), mother or father] will automatically require application of the contested claims procedure. This rule applies to all claims [in which] entitlement is based on relationship. [Additionally, requests for apportionment of a veteran's benefit will be handled under contest procedures (See par. 26.05).]

c. **Other Contested Claims.** The contested claims procedure will also be invoked when claims are received from two persons alleging entitlement on factual grounds not necessarily based on relationship. Two elements are requisite:

(1) A formal claim, and;

(2) A protest against payment to the other claimant. Evidence in support of a claim will be considered as a protest. A protest predicated on belief that a claimant is not deserving is not enough. The protest against payment must be based on the claimant's assertion of his[/her] own entitlement. Such claims include, but are not restricted to:

[(a)] A claim [in which] one parent protests the allowance of the same benefit to a parent in the other parental line; or

[(b)] A claim by a person for reimbursement as the payer of the expenses of last sickness and burial, coupled with the allegation that the widow[(er)] claimant for accrued benefit is not the legal widow[(er)].

36.02 ASCERTAINMENT OF INTENTION TO CONTEST

[a. **Pending Claims.**] When a formal claim has been filed and [is pending, and] correspondence is received from a person other than the claimant from which it appears that the correspondent may be entitled to the benefit claimed, the latter will be informed of the facts in the case and provided with the appropriate application form. He[/she] will also be informed that [there is a] claim of record [which] will be adjudicated without further notice [ ] if his[/her] claim is not filed within 30 days.

[ ]

[b. **Awards in Running Status.** Payment of a running award will not be suspended upon receipt of a formal or informal claim for the benefit being paid. If the facts in the particular case indicate that the second claimant may prove entitlement to all or part of the benefits already awarded, the second claimant should be promptly furnished a comprehensive letter of explanation and requested to furnish immediately any evidence which would warrant a favorable finding, in the event he or she intends to contest payment to the other person. He or she will also be informed that if no reply is received within 30 days, their claim will be dismissed without further notice.

c. **Due Process Requirements–Running Awards.** When evidence of entitlement is received from a contesting claimant and an administrative decision adverse to the person receiving payments is indicated, notice of due process rights must be furnished to the payee(s) affected. Decision and suspension, termination or adjustment of running award(s) will not be made prior to expiration of the control period. In contested claims cases this is a 60-day period. (See also par. 14.37.)]

36.03 DEVELOPMENT

a. **General.** Contested claims will be developed simultaneously, [with all interested parties given] every opportunity to submit all available evidence. The development of facts often presents substantial problems which cannot be resolved by the application of any specific rules or prescribed formulae. Methods of procedure will vary with each case, depending upon the nature of the contest, the evidence of record, and the availability of evidence, as well as other factors. [Although] contested claims will require more detailed development than is otherwise necessary, improper development or overdevelopment [ ] will be avoided.

b. **Assistance to Claimants.** Claimants will be furnished with the substance of the allegations of contesting claimants and such information in the VA records which may facilitate the procuring of evidence required to complete the case. Consideration will be given to [advising] the claimant, [as to] the possible sources where the evidence may be obtained. The claimant will also be notified that if it is ascertained that the required evidence cannot be furnished, the VA should be informed of that fact, with an explanation of the reason.

c. **Requests for Field Examinations.** The claimant must supply acceptable proof of the validity of a claim or present an adequate explanation of inability to supply any evidence that is lacking. A field examination is warranted only when all available evidence produced by claimants leaves a doubt as to proper adjudication. The sources consulted and the efforts made as reported by the claimant should be reflected in [any] request for a field examination.

36.04 DETERMINATIONS OF DOMESTIC RELATIONS QUESTIONS

Procedures in chapters 8 and 10 will be observed in the handling of questions involving the validity and legal effects of marriage (ceremonial or otherwise), divorce, ostensible marriage, void marriage, and adoption or legitimacy of children.

36.05 TIME LIMIT FOR SUBMISSION OF EVIDENCE

Every effort will be made to bring the contest to [resolution] at the earliest date. When additional evidence is required from a contesting claimant, he[/she] will be notified of the evidence necessary to complete the claim and advised substantially as follows:

> "This evidence should be submitted as promptly as possible. If you are unable to obtain the evidence, please state the reason and send us any proofs you do have. Failure to furnish the evidence requested within 1 year from the date of this letter may preclude the payment of any benefits on the basis of this claim."

A 60-day control will be established [and] appropriate followup action [ ] taken in the event the evidence is not received. A 30-day control will be maintained for response to the followup. (VAR 1109)

36.06 ACTION WITHIN TIME LIMIT FOR SUBMISSION OF EVIDENCE

The 1-year time limit for the submission of evidence will not preclude the disallowance of a claim at any time within this period if entitlement of the other claimant is established.

36.07 ADMINISTRATIVE DECISIONS

After complete development of the facts, [ ] an administrative decision will be prepared in accordance with paragraph 14.34. The Adjudication Officer's authority to approve these decisions may be delegated to [a] supervisor not lower than a section [ ] chief.

36.08 NOTIFICATION TO CLAIMANTS

a. **General.** When entitlement of one of the claimants is determined, the claim of the unsuccessful claimant will be formally disallowed on VA Form [21-523]. The claimants and other interested persons will be notified of the action taken [by letter addressed to the last known address.]

b. [**Deferred Award Action.** In order to allow the unsuccessful claimant opportunity to initiate an appeal and to provide for due process procedures in cases of running awards, award action will be deferred for 60 days. Notice of adverse determination will be furnished] as illustrated below:

[(1)] **Notice to Successful Claimant**

"We have determined that you are entitled to (type of benefit) as (relationship). We cannot release payments to you at this time because (name of other claimant) has also applied for this benefit and has the right to initiate an appeal by filing a notice of disagreement from our disallowance [ ] within 60 days from this date.

If notice of disagreement is not filed by (name of other claimant) within 60 days, [appropriate award action will be taken]. We will notify you if a notice of disagreement is filed."

[(2)] **Notice of Disallowance to Unsuccessful Claimant.** A disallowance letter as illustrated below will be forwarded to the unsuccessful claimant at the latest address of record:

"Your claim for _____ (type of benefit) _____ as _____ (relationship) _____

has been disallowed because _____

"We have determined that _____ (name of successful claimant) _____

is entitled to (type of benefit). Payment will be withheld, however, for a period of 60 days from the date of this letter, in order that your interest may be protected.

"You have the right to initiate an appeal to the Board of Veterans Appeals at any time [by filing a notice of disagreement] within 60 days from the date of this letter. [A notice of disagreement is simply a written communication which makes clear your intention to initiate an appeal and the specific part of our decision with which you disagree.] If you do not initiate an appeal within 60 days, this decision will become final and payment will be released to (name of successful claimant) without further notice to you."

[(3)] **Notice of Disagreement Not Received.** In the event a notice of disagreement is not received within the time allowed, an award will be made to the successful claimant.

c. [**Procedure in Cases Involving Running Awards.** In addition to the notices indicated above, notice of due process rights will be furnished to any contesting party(ies) whose award will be adjusted or terminated under the administrative decision made as to the contested claim. After application of due process procedures and the expiration of the 60-day control period for receipt of notice of disagreement:

(1) The affected running award(s) will be terminated or adjusted as of date of last payment (VAR 1500(F)) and;

(2) Benefits to the successful claimant will be awarded from date of entitlement. *NOTE: (In cases involving benefits payable to the legal widow(er), VAR 1657 is for application).]*

36.09 APPEALS PROCEDURE

a. **Notice of Disagreement Received.** Following timely receipt of a notice of disagreement all claimants and their representatives will be furnished with a statement of the case in the same manner as shown in chapter 18 of this manual. The claimant who filed a notice of disagreement will be [given] 30 days from the date of mailing of such statement of the case in which to file a substantive appeal. Extension of time to file a substantive appeal may be granted for good cause shown but with consideration to the interests of the other parties involved.

b. **Time Limit for Perfecting Appeals.** If a substantive appeal is timely filed and it is indicated that additional evidence is to be submitted, the appellant will be notified that such evidence should be submitted within 60 days. This period may be extended for good cause shown but with consideration to the interests of the other claimants involved. All claimants and interested parties will be notified of the extension of time allowed.

c. **Notice of Appeal to Successful Claimant.** Upon the filing of an appeal and supporting evidence, all parties other than the appellant will be notified of the substance of the appeal. If it is apparent that the submission of evidence would unduly delay this notification, the successful claimant will be notified of the filing of the appeal and advised [ ] later of its substance. [ ] A letter substantially as follows, with a 30-day control, will be mailed to the latest address of the successful claimant, with copies to interested parties [by separate covering letters:]

"We are referring further to your claim for (type of benefit) as (relationship) .

" (Name of unsuccessful claimant) has appealed from the disallowance for his(her) claim on the ground that _____ .

"You are allowed a period of 30 days from the date of this letter within which to file such brief or argument as you may desire in answer to the contentions made in the appeal. If you intend to rely on the evidence of record, it will expedite consideration of the appeal if you will notify this office that you do not intend to submit an answer to the appellant's contentions.

"At the end of 30 days all evidence then on file in the case will be considered with a view to submission of the appeal to the Board of Veterans Appeals for a decision."

d. **Notice to Unsuccessful Claimant.** The unsuccessful claimant will be notified of the status of the appeal as illustrated below:

"We have your appeal from the action disallowing your claim for (type of benefit) as (relationship)

"Notice has this date been issued to (name of successful claimant) of the filing of your appeal. He[(she)] will be allowed a period of 30 days within which to file [a] brief or argument as he[/she] may desire in answer to your contentions. At the expiration of that time, all evidence then on file in the case will be considered with a view to submission of the appeal to the Board of Veterans Appeals for a decision."

36.10 EFFECT OF INSURANCE INTERPLEADER ON CLAIMS FOR OTHER BENEFITS

[a. When] there is a dispute as to the person or persons entitled to payment of insurance benefits, [the matter is referred to the General Counsel for] suit in the nature of a bill of interpleader [action which] may be brought by the VA in the name of the United States against all persons having or claiming to have any interest in [the] insurance to determine the rights of the parties to the insurance proceeds.

[b. Although on matters of death pension, compensation, DIC, or accrued benefits the decision of the Administrator is final, it is the policy of the VA to give careful consideration to the findings of fact and conclusions of law of the court in determining the rights of the claimant to the benefit claimed. When an insurance matter has been submitted to the General Counsel for a bill of interpleader, final determination on claims for death pension, compensation, DIC, or accrued benefits] will not be, generally, held in abeyance pending the outcome of the submission to the General Counsel.

36.11 [(Deleted by change 133.)]

CHAPTER 37. ACCRUED BENEFITS

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CHAPTER 37. ACCRUED BENEFITS

SUBCHAPTER I. GENERAL AND RELATED INSTRUCTIONS

37.01 INITIAL ACTIONS UPON DEATH OF A BENEFICIARY

a. **General.** Action to terminate payments on account of the death of a VA beneficiary generally will be initiated by the Correspondence activity upon receipt of an acceptable notice of death.

b. **Disability Cases.** As explained in paragraphs 31.01 and 31.03, upon the death of a veteran, the processing of VA Form 23-7672, Notice of Death Worksheet, will terminate *all* payments being made under that claim number, effective the 1st day of the month in which the veteran died; except that if the benefit being paid is [EOR (Emergency Officers] retirement) pay the termination will be effective the day following the date of death. For action upon death of an apportionee in disability cases, see paragraph 26.16.

(1) **Award to Spouse for Veteran's Use.** An award to the veteran's spouse under VAR 1850(A)(2) is an award under payee number 00 (veteran) and as such, upon the death of the veteran will be terminated by the processing of the NOD transaction in the same manner as any other veteran-award being paid through a fiduciary. Accordingly, any payment due and unpaid will not be made automatically. Such payment may be made only as an accrued benefit under this chapter.

(2) **Apportioned Disability Awards.** The processing of the NOD transaction will effect termination of all apportionee awards in the case, automatically releasing payments due and unpaid (except if in suspense) through the end of the month preceding the month of the veteran's death; in [EOR] pay cases, through the date of death.

(a) When an NOD processes against a suspended apportionee award, the termination will be effective the same date as the veteran's award but payments from DLP to termination will not be released. A VA Form 20-6560 [, Notice of Benefit Payment Transaction] (msg 622), will be routed to the field station for appropriate action.

(b) Amounts withheld for an apportionee (pursuant to the requirements of VAR 1452, as well as payments in suspense, will be payable, if otherwise in order, without need for further claim or any restriction on the retroactive period covered by such payment. Evidence required for release of such amounts withheld or payments suspended will be subject only to the time limitation in response to a request therefor.

(c) Apportionees are not, however, entitled to any portion of increases payable by reason of an accrued rating, or due to failure to effect any required increase in the veteran's award prior or subsequent to death, as such amounts are payable only as accrued due the veteran under 38 U.S.C. 3021.

(d) Release of amounts withheld or payments in suspense through the end of the month preceding the month of the veteran's death will be effected by award action.

(e) When such award action is required, it will be processed by referral to the Finance activity for adjustment as a one-time payment, separate and apart from any accrued award which may be payable to the same person.

c. **Death Cases.** Upon receipt of an acceptable notice of death of a beneficiary in receipt of death benefits, the Correspondence activity will prepare VA Form 21-8046, [Payment Notice (Stop-Suspend-Resume,)] to terminate payments as of the first of the month of the payee's death. If the date of death is questionable, the Correspondence activity will prepare VA Form 21-8046 as a suspend payment notice.

(1) After the termination or suspend payment notice has been processed by the Input activity, the claims folder, with the original VA Form 21-8046, will be referred to the Authorization activity for review and necessary action.

(2) For any case in which the date of death is questionable, Authorization will obtain the necessary evidence and prepare the stop award notice.

(3) Payments being made to other dependents will not be interrupted solely because of the death of a dependent in receipt of a share of the death benefits. Action will be taken to adjust the awards to the survivors in accordance with paragraph 39.05.

(4) The holder of the payee's power of attorney should be notified of the termination or suspension of benefits because of death. (Also see par. 3.09.) [(See also M23-1, part I, paragraph 9.14, re completion of VA Form 23-8092, N.O.D. Information, by the correspondence clerk.)]

d. **Education Cases.** The processing of a notice of death worksheet (VA Form 23-7672) in an active education case will suspend chapter 31 and 34 accounts (NOD worksheets are not prepared in chapter 35 cases). Action will be taken as required below and as provided in paragraph 37.14 toward the determination of the amount payable, if any, and the awarding of accrued benefits.

(1) Deceased veteran under chapter 31. See M22-2, part V, paragraph 3.03b.

(2) Deceased apportionee under chapter 31. See M22-2, part V, paragraph 3.06b(3).

(3) Deceased veteran under chapter 34. See M22-2, part IV, paragraph 6.12.

(4) Deceased apportionee under chapter 34. See M22-2, part IV, paragraph 7.09.

(5) Deceased payee under chapter 35. See M22-2, part IV, paragraph 6.12.

e. **DLP Terminations.** Msg Code 623, STOP PAYMENT PROCESSED DLP ESTABLISHED, issues on VA Form 20-6560 when an NOD has an effective date more than 1 year prior to processing date. Since the computer assumed the date shown on the NOD to be incorrect and terminated benefits DLP, the amount of accrued available must be computed at the regional office (par. 37.13). (See also par. 31.01g.)

37.02 FURNISHING APPLICATIONS FOR ACCRUED BENEFITS

a. **General.** Upon receipt of the claims folder following initiation of the NOD or death stop actions, or upon notice of the death of a person whose entitlement has been or may be established upon the basis of a pending claim, review, or appellate action, based upon evidence in file at date of death, a determination will be made as to the availability of accrued benefits payable in accordance with this chapter.

(1) Normally the existence and amount of any accrued available may be determined from a review of VA Form 20-6560 and other material in the claims folder. In the case of a running award stopped by an NOD or stop pay, when the initial review discloses no indication of a possible accrued amount no further action will be taken and no control will be maintained.

(2) When the initial review indicates there may be an accrued amount available but the amount cannot be ascertained, a local diary will be setup to insure that action will be taken upon receipt of a VA Form 20-6560 to award the accrued or furnish an application as required.

(3) In the rare case when a VA Form 20-6560 will not be received automatically as a result of NOD or death stop pay processing, a transaction 39 may be processed to request a master record writeout. This will be done only when the amount available cannot otherwise be determined.

b. **Upon Death of a Veteran.** See paragraph 32.09.

c. **Upon Death of a Dependent of a Deceased Veteran.** In accordance with VAR 1152, a specific claim for accrued benefits payable at the death of a dependent of a deceased veteran will not be required in any case in

which a claim for death benefits is being furnished to or for a preferred claimant. [Any] claim filed by or on behalf of a preferred claimant for death benefits [will be considered] as a claim for the accrued payable on the death of the dependent.

[(1) Applications will be routinely furnished only under the circumstances described below, unless, of course, the accrued amount payable is so small that the claimant's expenses in procuring evidence would not be justified.]

(2) **VA Form 21-601**, Application for Reimbursement From Accrued Amounts Due a Deceased Beneficiary, will be forwarded to the prospective claimant when it appears that there is no entitlement to accrued benefits except by way of reimbursement; that is:

(a) Upon the death of a widow/er or of a child when there is no widow/er, [or of a child in receipt of DEA,] when there are no children within the definition in VAR 2000(D)(2).

(b) Upon death of a child in receipt of an apportioned share of the widow/er's award (VAR 2000(B)(3)).

(c) Upon the death of a parent. [(VAR 2000(A)(4)).]

[(d) Upon the death of a husband or wife (of a living veteran) in receipt of DEA. (VAR 2000(F)).]

d. **Preparation of VA Form 21-679.** [If] there is an accrued amount available but it is determined that an application form should not be furnished, either because the amount is too small and/or because there is no one who can establish entitlement thereto, VA Form 21-679 will be prepared for the claims folder. (See par. 32.12; also see par. 14.08c re homicide cases.)

37.03 PENDING APPEALS

The procedures outlined in paragraph 18.30 will be followed with respect to appeals pending at the date of death or appeals from disability decisions timely filed after death. If reconsideration by either the office of original jurisdiction or the Board of Veterans Appeals results in a favorable decision granting or retroactively increasing benefits, and a claim for accrued benefits is timely filed, such additional sums will be payable as accrued under 38 U.S.C. 3021 in accordance with this chapter.

37.04 PENDING CLAIMS

a. **General.** VARs 1151, 1155, 1157, 1400, 1401, [10030, 10031, 10032, 11030, 11031, 11032, 13030, 13031, 13032, and 14131] will be applied in determining whether a claim, formal or informal, was pending at date of death and the effective date of benefits or increased benefits for payment thereby payable as accrued under 38 U.S.C. 3021 in accordance with this chapter. [(See also par. 37.07 re requirement of evidence in file at date of death.)]

b. **Acceptance of Informal Claim.** As to an informal claim pending at date of death, not more than 1 year can have elapsed between the date of its receipt in the VA and the date of death, and all necessary evidence to establish entitlement must have been on file at date of death. If a claim for [ ] disability compensation was pending at date of veteran's death and a specific claim for disability pension has not been filed, the claim for disability compensation will be accepted as an informal claim for disability pension. (VAR 1151)

37.05 ELECTIONS PENDING AT DEATH

a. **General.** An election by the deceased beneficiary, not acted upon at the time of death, will be treated in the same manner as though the decedent were still living; that is, a disadvantageous election will not be accepted to the detriment of the claimant entitled to accrued benefits. Any increase thereby allowed will be payable as accrued under 38 U.S.C. 3021 in accordance with this chapter.

b. **Election of Disability Compensation or Pension in Lieu of Retired Pay.** [When] a veteran was in receipt of retired pay from a service department at the date of his death and had [either filed a claim for or formally] elected to receive a greater rate of disability compensation or pension from the VA, accrued disability compensation or pension may be payable under 38 U.S.C. 3021.

[(1)] The total amount payable over the period involved (not to exceed 1 year prior to death) [will] be considered rather than varying rates over separate periods of time within the whole period.

[(2)] Before an award of accrued is prepared, the service department will be requested on VA Form 3101, to furnish the monthly rates paid and the periods for which paid, including payments to survivors of amounts [of retired pay] remaining unpaid at veteran's death.

[(3)] The accrued amount payable will be determined by deducting the amount of retired pay paid from the amount of disability compensation or pension payable over the same period of time.

37.06 AUTOMATIC INCREASE NOT EFFECTED PRIOR TO DEATH

Failure to make an automatic adjustment to authorize an increased rate payable on a veteran's award will be considered an erroneous action. In making the award of accrued benefits payable under 38 U.S.C. 3021, the increase will be allowed as if the action had been timely taken, but subject to the 1-year limitation on the period concerned. An automatic increase will not have an effect on amounts payable as accrued lump sum under 38 U.S.C. [3202(d)], since, as stated above, the automatic increase will be payable as accrued only under 38 U.S.C. 3021. [(See par. 37.22c.)]

37.07 EVIDENCE IN FILE

a. **General.** VAR 2000(D)(4) defines the term "evidence in file at date of death" for the purpose of 38 U.S.C. 3021. Rating action for accrued purposes will not be requested unless evidence was on file to establish relationship and other factors affecting entitlement. The rating [board] is responsible for determining whether the evidence prerequisite to a favorable rating determination was in file at date of death. [(See par. 57.03.)] The authorization group will determine whether other evidence necessary to support an award was on file at date of death.

b. **Sufficiency of Prima Facie Evidence in Other Than Original Claims.** When an award of accrued benefits, *based upon an award, [running or in suspense at date of death,] or upon a reopened claim,* involves an increase in rate or grant of payments claimed, withheld or suspended [due to lack of] certain required evidence, prima facie evidence in file at date of death may be *confirmed* by the submission of evidence in connection with the claim for accrued benefits. For example, [if] the veteran or widow/er has alleged in his or her claim, or in other documents in file, to have had one or more dependents, evidence to establish relationship and existence of such dependents may be submitted within the time limit for submission of evidence in connection with the claim for accrued benefits. Similarly, when prima facie evidence of annual income was submitted before death, additional confirmatory or explanatory income evidence submitted after death may be accepted.

c. **Evidence in File Required for Accrued, Payable on Original Claims.** When an original award of accrued benefits is involved, prima facie evidence in file at date of death is not sufficient to establish entitlement. For example, when dependency or marital status is a factor, [the evidence necessary to establish the existence and relationship of the dependent] must have been in file at the date of death. [This evidence must have been] sufficient to have warranted favorable award action had death not intervened before it could be accomplished. Proof of annual income, when material, likewise must be in file at date of death.

[d. **All Cases.** For both original and non-original claims, evidence in file at date of death will include evidence (even uncertified statements) which is essentially complete and of such weight as to establish service-connection and/or degree of disability when supported by other evidence in file at date of death or when considered in connection with the identifying, verifying or corroborating effect of the death certificate (VAR 2000(D)(4)(a)).]

37.08 POSTHUMOUS AWARDS

When award action is required, under any of the foregoing paragraphs, to grant or adjust benefits posthumously, such award will be prepared "For File Purposes–To Establish Accrued" only, and will not be made input to the Hines DPC. Reference may then be made in the "Remarks" block of the accrued award to such record purpose award as the basis for computation of the accrued [(in addition to checking "Amount Established By – RO Comp.").] (See par. 37.51r.) For rating actions pending at death, see chapter 57.

37.09 PRECEDENCE OF TITLE

a. **General.** Title to accrued benefits vests according to the line of succession established by the applicable statutory provision. (See chart A.) The fact that a preferred beneficiary may fail to file or prosecute a claim does not of itself permit payment of his/her share of accrued to a person or persons having an equal or lower preference; nor will a waiver of right permit such payment. [(But see subpar. d below, re waiver when only parents or last person in order of precedence, are involved.)]

b. **Rights of Persons Having Lower Preference.** When a person having preferred title survives the deceased beneficiary but, before expiration of the period for filing claim, dies, forfeits title or becomes otherwise disqualified before receiving and negotiating the check for his/her share of the accrued benefit, any accrued which would have been payable to [that individual] will be payable to the person(s) next entitled, upon timely claim therefor, on the basis of relationship, or as reimbursement.

[(1)] When the claim of a person as a preferred dependent is disallowed, the accrued may not be awarded to a claimant in the same or next class or as reimbursement until the 1-year period has expired. This rule will not apply if the disallowed claimant waives the right of appeal.

[(2)] Simultaneous claims from persons with different preference status will not be considered as contested claims except as provided in paragraphs 36.01 and 36.02.

c. **Payment to Estate of Preferred Claimant.** When a person having preferred title has filed claim and dies after establishing such entitlement but before payment, and no other person within a permitted class or relationship survives, the accrued becomes payable as reimbursement to [that individual's] estate if he/she was the payer of the expenses of last [illness] and burial of the deceased beneficiary. (See par. 37.37c, re reimbursement to estate of deceased claimant.)

d. **Payment as Reimbursement to Sole Survivor.** When the only person eligible, on the basis of relationship, has not filed a claim for death benefits *or* has not established relationship (and dependency as a parent), and such person has paid or is responsible for payment of the expenses of last [illness] and burial of the deceased beneficiary, the accrued amount will be payable as reimbursement (upon filing VA Form 21-601 and supporting evidence) rather than require the claimant to incur the greater expense involved in establishing entitlement by way of relationship (and dependency of parent as required).

(1) When *both* parents are the only survivors and their claims for accrued have been denied because of nondependency and *either* parent bore the expense of last [illness] and burial, payment may be made to such parent, upon filing VA Form 21-601, if waiver of appeal is obtained from the other parent.

(2) If neither parent (or sole surviving relative) paid the last expense, payment of the accrued may be made to the person who is entitled, by reimbursement, upon timely claim and evidence, and waiver of right of appeal by both parents (or sole surviving relative), or expiration of the appeal period, as stated in subparagraph b above.

e. **Evidence Requirements.** Record evidence will be required to eliminate persons who would have the same or a higher status of preference only when it is indicated that such a person survived the deceased beneficiary. Otherwise, statements filed in the claims folder prior to the death of the veteran [or] primary beneficiary) will be adequate.

SUBCHAPTER II. [ACCRUED] PAYABLE [ ] BASED ON RELATIONSHIP

SECTION A. [PERIODIC MONETARY] BENEFITS PAYABLE AS ACCRUED (VAR 2000)

37.10 SCOPE

38 U.S.C. 3021 (VAR 2000), governs entitlement to and disposition of all VA benefits payable as regular monthly benefits (except those excluded below) [and other periodic benefits, such as clothing allowance (par. 24.171),] to which a beneficiary was entitled at time of death, either on the basis of an existing decision or on evidence in file at the date of death (par. 37.07). The only regular monthly benefits excluded are:

a. Naval pension. (See VAR 1803(D) [and par. 24.11.])

b. Special allowance under 38 U.S.C. 412(a). (See par. 40.18.)

c. [(Deleted by change 185.)]

d. Insurance (See M21-2.)

NOTE: When regular monthly payments are being made under a combined award (which includes naval pension or sec. 412(a) special allowance), the portion which represents an excluded benefit must not be included in the computation of the accrued benefit otherwise payable.

37.11 LIMITATIONS

a. [**One-Year Limit.**] The distinguishing feature of accrued benefits payable under 38 U.S.C. 3021 is found in the time limitations on its payment. The retroactive period which may be covered by an award of such accrued is restricted to a period not in excess of 1 year prior to the date of [death.] There is also a 1-year limitation from the date of death in which claims may be filed for the accrued and all evidence to complete the claim must be submitted within 1 year from the date it was requested.

b. [**Award Action Pending at Death.** The 1-year limitation for filing of a claim for accrued applies also to] cases in which a rating or decision was in existence at the date of death or in which a claim or an appeal was pending and the evidence required to allow such claim or appeal was in file at date of death.

37.12 PERSONS ENTITLED

[Payment of accrued under 38 U.S.C. 3021 by reason of relationship is limited to the following; in all other cases, payment will be by way of reimbursement.]

a. **Upon death of a veteran**, accrued will be payable to the following survivor or survivors, in the order named:

(1) Spouse as defined by VAR 2000(D)(1).

NOTE: Continuous cohabitation is not a factor except as to spouse recognized [by reason of a "Marriage Deemed Valid"] under VAR 1052.

(2) [Minor, helpless or school] child or children, in equal shares, as defined by VAR 2000(D)(2), including a child who elects [DEA] benefits or who has elected DIC based on the service of another [parent in the same parental line.]

(3) Parents, if *dependent* at the date of the veteran's death, in equal shares (VAR 2000(D)(3)).

b. **Upon death of a widow/er**, accrued [(including DEA)] will be payable to the veteran's child or children as stated in the foregoing subparagraph a(2); [accrued DEA of a wife/husband is payable only as reimbursement (VAR 2000(F)).]

c. **Upon death of a child [(including a child entitled to DEA),]** accrued will be payable to the surviving child or children on the basis of relationship, except that:

(1) When the deceased child was entitled to an apportioned share of the widow/er's award, accrued is payable only as reimbursement [(VAR 2000(B)(3)).]

(2) [When the deceased child was in receipt of death pension, compensation or DIC a remaining child(ren) who has elected DEA] benefits will be entitled only to unpaid benefits which became due and payable to the deceased child for periods prior to the commencement of [DEA] benefits [to the surviving child (VAR 2000(D)(2)).]

37.13 DETERMINING AMOUNT OF ACCRUED

a. **General.** The processing of NOD or death stop transaction will result, [when possible,] in the computer generation of VA Form 20-6560 showing the status of the account, and the accrued amount payable [ ] or overpayment created, if any. (See pars. [37.01b, 37.01e and] 37.53.)

[(1)] VA Form 20-6560 will show the date of last payment and information as to returned checks received and processed at the time of processing of the NOD or death stop transaction.

[(2)] A separate VA Form 20-6560 will be produced for checks returned and canceled thereafter.

NOTE: Accrued which may be payable, [for which VA Form 20-6560 is not issued,] must be determined from analysis of the case folder and will be computed in [the regional office.]

b. **Computation by [Regional Office.]** When the entire accrued amount payable is not shown on one VA Form 20-6560, or the termination was effected as of an incorrect date, or a posthumous adjustment was necessary, the adjudicator will [refer the case to the Finance activity (with a dummy or record purpose award, if necessary) to compute the amount payable for the award action. This need for computation will occur in the following instances:]

(1) [When] accrued [must be] computed through [a date other than the last of the month preceding death, as follows:

(a) Through] the date of death–Officers' retirement pay [and subsistence allowance under chapter 31.

(b) Through the date of last attendance–educational allowance under chapters 34 and 35 (see par. 37.01d).

(c) Through the last day of the month of death: Amounts due a deceased child receiving an apportioned share of a widow/er's award (payable only as reimbursement.)]

(2) Accrued computed through the last day of the month preceding the month of death: [Any] periodic monthly benefits (except as provided in subparagraph (1) [ ] in cases in which:

(a) Payments were in suspense from a prior date.

(b) Posthumous adjustments were made including those required by an accrued rating.

(c) Amounts being withheld for possible apportionment, subsequently denied.

(d) Checks delivered after death covering period prior to the termination date. (See subpar. c below.)

[ ]

c. **Returned and Canceled Checks.** Funds represented by any checks *delivered after death* covering a period prior to and *extending beyond the date of termination due to death* are payable as accrued under section 3021 only with respect to the portion due and unpaid prior to such termination date. (See [sec. B, this subch.])

37.14 [EDUCATION BENEFITS

a. **General.** Education benefits payable as accrued include monthly educational assistance allowance under chapters 31, 34, and 35, special restorative training allowance, tutorial assistance, and work study allowance. An award of accrued education benefits will be prepared on VA Form 21-4189 in the same manner as other accrued awards.

(1) If there is an accrued amount of compensation, pension or DIC available to the same person in addititon to the education benefits, only one accrued award may be prepared; entering the appropriate entitlement code for the compensation, pension or DIC in that item, with an explanation in "Remarks" as to the computation of the total accrued payable.

(2) If separate accrued awards are prepared, the appropriate entitlement code for each benefit will be for entry. In addition, the remarks section of each will contain a reference to the other. The awards may be made input in the same batch transmittal.

b. **Concurrent Entitlement.** Whenever a veteran or other beneficiary was in receipt of or entitled to more than one benefit at the time of his/her death, the status of both accounts must be determined before any accrued award is prepared and before an application for accrued amounts is furnished to a potential claimant. This is necessary because we may have to create an accounts receivable in one account which will reduce or eliminate the accrued amount available in the other account.

(1) If the over payment in one account is less than the accrued amount available in the other account an award will be prepared on VA Form 21-4189 for the full amount available.

(a) The award will be annotated in the remarks section to show the existence of the O/P in the other account and the amount if known, and referred with the claims folder(s) by VA Form 3230 to the Finance activity for the adjustment of the accounts receivable and such other action as may be required.

(b) If an application for accrued must be furnished, the potential claimant must be informed of the amount of accrued available after deduction of the overpayment in the other account.

(2) If the overpayment in one account exceeds the accrued amount available in the other account, no accrued award will be prepared and notification of an accrued amount available will not be furnished.

(a) The VA Form 20-6560 showing an accrued amount available will be annotated to show that no accrued is available due to an overpayment in the other account.

(b) The folder(s) should be referred to the Finance activity by VA Form 3230 as provided in subparagraph (1)(a) above.

(3) If an education award is in a suspended status the account must be terminated before the transfer of funds is accomplished.

(4) The remarks section of the award or the annotation on VA Form 20-6560, as well as the VA Form 3230, should be as specific as possible so that the Finance activity will know exactly what is required. They will be informed of the amount of the overpayment if known and the period involved and specifically requested to transfer funds from one account to the other to reduce the accounts receivable and adjust or eliminate the collection letters.

c. **Ascertainment of Education Accrued Payable.** Whenever concurrent entitlement exists, both accounts (folders) must be reviewed and procedures of subparagraph b above followed in any determination regarding accrued. The procedures of subparagraph b need not be resorted to when a deceased veteran, in receipt of compensation, received chapter 31 or 34 benefits at some time in the past (or vice versa), but had no award of or pending claim for the other benefits at the time of his or her death.

(1) **Chapter 31.** Whenever a folder is reviewed for a possible chapter 31 accrued the claims folder will be reviewed and the provisions of subparagraph b will be applied.

(a) When a folder is reviewed for a possible compensation accrued the adjudicator will not request the R&E folder unless there is some indication in the claims folder that the veteran may have been in receipt of or had a pending claim for chapter 31 benefits; that is, when there is VA Form 22-6564, Claims Folder Flash, backfiled on the left flap of the claims folder or a recent VA Form 22-1900 filed in the claims folder.

(b) If the chapter 31 folder is reviewed and a determination made that the veteran was not in receipt of or entitled to chapter 31 benefits at the time of his/her death, the claims folder should be so annotated and provisions of subparagraph b need not be applied.

(c) If the review indicates chapter 31 entitlement at time of death, the provisions of subparagraph b are for application.

(2) **Chapter 34.** Since chapter 34 is payable from the regular claims folder a review for accrued of either education or compensation or pension will readily disclose whether there was concurrent entitlement. If there is concurrent entitlement, the provisions of subparagraph b are for application.

(3) **Chapter 35**

(a) If a chapter 35 widow/er, child under age 18, or helpless child dies and the chapter 35 folder indicates a possible accrued amount available, the claims folder will be obtained and the procedures of subparagraph b followed. If a claims folder indicates a possible accrued amount of pension or DIC upon the death of a widow/er or child, the claims folder will be examined to determine if a chapter 35 folder has been prepared for a widow/er or if there is a copy of a chapter 35 award for the deceased child.

(b) If so, the chapter 35 folder will be reviewed to determine if there was concurrent entitlement at the time of death. If this is the case, procedures outlined in subparagraph b must be followed.]

37.15 [(Deleted by change 185.)]

SECTION B. CHECKS NOT NEGOTIATED PRIOR TO DEATH (VAR 2003)

37.16 SCOPE

[a. **Benefits Payable.** 38 U.S.C. 3022 (VAR 2003), provides for the disposition of funds represented by checks, *the whole proceeds of which are for a period not extending beyond the effective date of termination for*

death, which were *received* but not negotiated by the payee and which were returned and canceled. Included within the scope of this subchapter are:

(1) Checks in payment of any of the regular monthly benefits not excluded by paragraph 37.10.

(2) Proceeds of unnegotiated checks representing amounts previously withheld in the special deposit account "Withheld Foreign Checks," under Public Law 828, 76th Congress, as amended (par. 15.41). (See also sec. E below re funds still withheld.)

(3) Returned and canceled checks covering amounts which were deposited in funds due incompetent beneficiaries for periods *prior to August 8, 1946*. (See par. 37.30.)

b. **Benefits Not Payable.** These procedures will not be applicable for:

(1) Any check delivered after the payee's death or representing payment for a period extending beyond the date of termination due to death. (See par. 37.13c.)

(2) Any check in payment of a lump sum representing amounts withheld under VAR 1551(B) or 1557, which will be subject to the provisions of VAR 2001 or 2007 as applicable. (See sec. C below.)|

37.17 LIMITATIONS–PERSONS ENTITLED

Generally, when the payee of a check has died [ ] after the last day of the period covered by such returned and canceled check, the proceeds, although payable as accrued to the identical classes and in the manner provided by 38 U.S.C. 3021 (par. 37.12), are *not* subject to any restriction on the *retroactive period* which may be covered by the amount payable *nor* to the other *time limitations* contained in that section of the law. [Payment may also be made as reimbursement for last illness and burial expenses when there is no one within a permitted class. (See subch. III below.)]

37.18 DEVELOPMENT OF CLAIMS

The standard evidence paragraph should be varied appropriately when requesting evidence in connection with the payment of accrued under 38 U.S.C. 3022 unless the claimant is also entitled to accrued benefits under 38 U.S.C. 3021 and the 1-year period has not elapsed.

37.19 AMOUNTS NOT PAYABLE AS ACCRUED

[*When a claim has been filed* for the proceeds of unnegotiated checks, and it has been determined that none or only a part of the accrued amount is payable, the Fiscal activity will be notified as follows:

a. **No Accrued Payable.** If none of the proceeds of the returned and canceled checks are payable on the basis of either relationship or reimbursement, Adjudication will prepare a formal memorandum to the Fiscal activity, advising them that the accrued amount will not be paid. In addition, a formal disallowance will be prepared in accordance with paragraph 37.55.

b. **Accrued Amount Only Partially Paid.** When less than the entire amount of the proceeds of the returned and canceled checks are payable (see pars. 37.09 and 37.42a), the amount not paid will be shown on the accrued reimbursement award under "Remarks" and the award will be routed through the Fiscal activity to Input. (See par. 37.51r.)]

SECTION C. AMOUNTS WITHHELD UNDER VAR 1551(B) (VAR 2001–[ACCRUED LUMP SUM)]

37.20 SCOPE

38 U.S.C. 3203(a)(2), [as in effect June 30, 1960,] provides for the disposition of [disability pension] amounts withheld [under VAR 1551(B)] by reason of the hospitalization of a *competent* veteran (see ch. 25, subch. II), as an accrued lump sum not paid prior to his or her death [(VAR 2001).] However, [subsection (b)(1)] expressly prohibits from payment as accrued such withheld amounts in cases of *incompetent* veterans [(but see par. 28.20 re posthumous care and maintenance awards).] (See also par. 37.16b.)

[NOTE: Public Law 92-328, inter alia repealed (effective August 1, 1972) the provision for withholding in compensation or retirement pay cases and reorganized sections 3202 and 3203 of Title 38 but made no changes in withholding as to protected (or current) pension.]

37.21 PERSONS ENTITLED–LIMITATIONS

[a. **Order of Preference**. The accrued lump sum under VAR 2001 (amount withheld from hospitalized competent veterans)] is payable to the same persons in the same order of relationship as is accrued under [VAR 2000] (par. 37.12) *EXCEPT* that the entitlement of children is not subject to the age or marital status requirements therein.

[b. **Time Limitations**

(1) In general, a claim for lump-sum accrued must be filled within 5 years from the date of the veteran's death. If the preferred claimant is under a legal disability at the time of the veteran's death, the 5 year period is to be computed from the date of termination or removal of the legal disability.

(2) There is no time limit for the submission of evidence to perfect a claim.

(3) There is no restriction on the retroactive period which may be covered by an award of lump-sum accrued.]

37.22 COMPUTATION

No provision has been made for the maintenance of a running balance on the amounts withheld under VAR 1551(B) due to the hospitalization of a competent veteran. The accumulated amount payable as accrued lump sum must, therefore, be computed on the basis of the prior awards in file and pertinent information reflected in VA Form 20-6560. The following will be observed in determining whether there is an accrued lump sum payable:

a. **Change in Non-Service-Connected Disability**. When a rating of permanent and total disability is [ ] discontinued because of a change in circumstances or condition, amounts withheld prior to the effective date of termination of the award are payable as accrued lump sum. However, if the permanent and total rating is considered as erroneous (for fraud or no legal basis), the award will be retroactively terminated and accrued lump sum will not be payable.

b. (Deleted by change 185.)

c. **Retroactive Increase**. Lump-sum accrued is payable only [for periods covered by an] award (active or suspended) in effect at the date of the veteran's death. No action will be taken to increase or create an accrued lump-sum benefit by reason of an accrued rating or posthumous authorization decision relative to rates payable to the veteran over a retroactive period. [The amount payable will be only amounts withheld as determined by awards and VA Forms 20-6560 in file.] (Also see pars. 37.06 and 37.07)

37.23 ACCRUED LUMP SUM [(VAR 2001)] AND ACCRUED UNDER VAR 2000 DISTINGUISHED

In [some instances when] accrued lump sum is payable, there will also be involved the possibility of an amount being payable as accrued which involves that portion of the award in course of payment [(or in suspense)] at the date of the veteran's death. If, in such a case, there should be a determination, made subsequent to the veteran's death pursuant to [VAR 2000,] that an increased rate of [ ] pension or retirement pay is payable, the additional benefit is payable as accrued subject to limitations contained in 38 U.S.C. 3021. The award of accrued lump sum will not, however, be affected by such posthumous action. The computations of the accrued benefits due and payable in the following example demonstrate the distinguishing characteristics of the two types of accrued.

[Example. Assume a single competent veteran in receipt of protected pension of $78.75 monthly, was hospitalized by the VA on July 19, 1974. Due to this hospitalization, $39.38 monthly was withheld from his payment effective February 1, 1975, under VAR 1551(B). The veteran died August 7, 1976, still hospitalized. Subsequently, based on evidence in file at date of death, an accrued rating decision was made awarding entitlement to aid and attendance benefits from July 19, 1974, the date of the veteran's hospital admission.

NOTE: Under VAR 1552, the veteran's aid and attendance benefits would be reduced to the housebound rate effective September 1, 1974, the first of the month following the first full month of hospitalization.

The adjudicator will furnish the entitlement and prior payment, as shown below, to the Finance activity for the computation shown and return for the award action.

Entitled to		**Computation**	
From 2-1-75	$78.75		
Thru 8-7-75		6 months, 7 days @ $78.75	$ 490.88
From 8-8-75	$100.00		
Thru 7-31-76		11 months, 24 days @ $100	$1180.00
			$1670.88

(NOTE: $100 housebound rate limited to 1 year prior to death)

Less Prior Payments			
From 2-1-75	$39.37		
Thru 7-31-76		18 months @ $39.37	$708.66
Accrued Payable			$962.22

The amount shown above ($962.22) would be payable under the conditions described in VAR 2000. However, in the event that full payment is not made either because there is no beneficiary in a preferred class and amounts payable as reimbursement are less than the amount available or because a claim is not filed within the 1-year period following death, it becomes important to distinguish how much of the accrued determined above may be payable as lump sum accrued under the more liberal provisions of VAR 2001 which allow payment to a married child and allow the claim to be filed within 5 years following death.

The accrued lump sum payable under VAR 2001 would be $708.84, on the basis of the amounts withheld under VAR 1551(B), viz:

$39.38 per month from 2-1-75
None per month from 8-1-76 (18 months)]

SECTION D. PERSONAL FUNDS OF PATIENTS ACCOUNTS (VAR 2009)

37.24 SCOPE

[This section deals with the payment of only that PFOP (Personal Funds of Patients) under regional office control and maintained by Hines DPC. It does not relate to PFOP under the control of Directors of VA hospitals except as to certifications required of persons having eligibility to such funds. (See also par. 28.09 re establishment and handling of FDIB and PFOP accounts.)

a. **Deaths Prior to December 1, 1959.**] Prior to enactment of Public Law 86-146 (effective December 1, 1959), upon the death of an incompetent veteran, all proceeds on deposit in PFOP accounts [(including amounts transferred into PFOP from FDIB–see par. 37.30)] were payable through the local Finance activity to the personal representative of the veteran's estate.

[b. **Deaths On and After December 1, 1959.** For incompetent veterans who died on or after December 1, 1959, all *gratuitous* benefits which were paid under laws administered by the VA and which were deposited before, on or after December 1, 1959, in a PFOP account, will be payable under the provisions of VAR 2009, as explained in the paragraphs below to the identical classes of dependents as provided in paragraph 37.12a (except that children are entitled regardless of age or marital status) or as reimbursement.

c. **Non-VA Funds.** Funds not deposited in the PFOP account by the VA, but deposited by the veteran or others are excluded from application of this law and may be disposed of by the local Finance activity only in accordance with the law and instructions in effect prior to enactment of Public Law 86-146.]

37.25 PFOP ACCRUED DISTINGUISHED FROM LUMP SUM ACCRUED

a. [**General.** The differences between PFOP and lump sum accrued are basic.

(1) PFOP accrued represents funds *deposited by the VA* to the account of incompetent veterans.

(2) Lump sum accrued represents amounts *withheld* from awards to hospitalized *competent* veterans.

NOTE: Amounts withheld from awards to incompetent veterans, for periods prior as well as subsequent to the rating of incompetency, are specifically prohibited from payment as accrued lump sum by VAR 2007.

b.] **Limitations.** Generally, the principles and procedures for payment of lump sum accrued under VAR 2001 are applicable in determining entitlement to gratuitous funds on deposit in PFOP under 38 U.S.C. 3202(d).

[(1)] Claim for such funds must [ ] be filed within 5 years from the date of the veteran's death.

[(2)] There is no restriction on the retroactive period which may be covered by the funds to be awarded.

[(3)] Once a claim has been filed, there is no time limit for the submission of evidence requested to perfect the claim. However, if a claimant fails to submit requested evidence within *1 year* in cases which have been referred to the Adjudication Division for certification of [person(s) entitled,] Adjudication Division will, at the expiration of the control period established thereon, inform the referring activity to transfer (redeposit) the funds to the applicable current appropriation, and give the reason therefor.

[c.] **Persons Entitled.** For death occurring on or after July 25, 1962, the classes of eligible payees for both PFOP and lump sum accrued are identical (VAR 2001). Brothers, sisters and non-dependent parents are not and never have been entitled to PFOP accrued on the basis of relationship (VAR 2009(A)).

[NOTE:] For the special provisions restricting payment of PFOP accrued as reimbursement, see paragraph 37.43.

37.26 [EFFECT OF PROCESSING] NOTICE OF DEATH

A running balance of amounts on deposit in PFOP accounts will be maintained at the Hines DPC. When a notice of death transaction is processed at the Hines DPC on an account subject to a withholding for PFOP, the Accounting Section will be advised by the Computer Operations Division concerning the [veteran's death.] The Accounting Section will notify the field station of the amount on deposit in PFOP to the veteran's account and request that appropriate action be taken for its disposition.

37.27 ACTION BY LOCAL FINANCE ACTIVITY

a. **Analysis of Accounts.** Upon notification of the death of an incompetent veteran, the Hines DPC Accounting Section will analyze the balance in the PFOP account to identify the funds derived from gratuitous VA benefits. The analysis will be made a matter of record in the station having jurisdiction of the account. The original of the analysis will be forwarded to the Adjudication Division of the office having jurisdiction of the XC-folder.

b. **Initiation of Claims.** Initial responsibility for obtaining claims from persons within the prescribed classes for the gratuitous funds on deposit in PFOP of a deceased incompetent veteran is vested in the Registrar of the VA hospital or the Finance activity in the regional office having jurisdiction of the account.

[(1)] When it appears that there is someone in the prescribed class who may be entitled to the gratuitous portion of the PFOP account or to a share thereof, the registrar of the VA hospital or the Finance activity in the regional office having jurisdiction of the account will inform such person or persons of the potential rights thereto and will furnish the necessary application form (VA Form 21-6898, [Application For Amounts on Deposit For Deceased Veteran.

(2)] Such a claim will be processed [by the Adjudication Division] and payment thereof made by the Finance activity in the hospital or by the Hines DPC, as appropriate, as hereinafter prescribed.

37.28 TRANSFER (REDEPOSIT) OF FUNDS

a. **No Heirs Within Permitted Class.** When it appears that no individual within the prescribed class eligible to receive on the basis of relationship has survived the veteran, [notice of that fact will be sent promptly to the Finance activity.] Transfer (redeposit) of the gratuitous portion of the PFOP funds to the applicable current appropriation will be authorized by the Finance activity without delay. Transfer (redeposit) will likewise be authorized [ ] when no claim has been received within 1 year from date of the veteran's death.

b. **Record of Transfer (Redeposit).** The amount of funds transferred (redeposited) to the applicable current appropriation and the date of such action will be made a matter of record in the XC-folder by SF 1081 or other document processed by the Finance activity authorizing transfer (redeposit) of such funds.

37.29 ADJUDICATION DIVISION RESPONSIBILITY

a. **[Funds Under VA Hospital Control.]** Prior to the transfer (redeposit) to the applicable current appropriation, the Adjudication Division having jurisdiction of the XC-folder will be responsible only for the certificate of eligibility or the memorandum of nonentitlement as prescribed below.

[(1) Applications for the gratuitous funds on deposit in PFOP will be initially received and reviewed by the Chief, Medical Administration of a VA hospital or the Finance activity of a regional office. Claims based on *relationship* with the permitted classes will be forwarded to the Adjudication Division for review and if necessary, development of the evidence necessary to establish the eligibility and proper share(s) of the claimant(s).

(2) If it is determined that the claimant(s) is a member of an eligible class, a certificate of eligibility (original and one copy) will be prepared for the signature of the adjudicator and an authorizing official, setting forth the eligibility of each claimant and the proportion to which he or she is entitled.

(3) When it is determined that the claimant(s) has no entitlement to a share of the gratuitous funds on deposit in PFOP, a memorandum of nonentitlement (original and one copy) will be prepared which will set forth concisely the reasons why such determination has been made. Both the original and the copy will be signed by an adjudicator and approved by an authorizing official.

(4) The signed copy of the certificate or memorandum will be filed in the award section of the XC-folder. Since the referred claim will not remain in the XC-folder, care should be taken to incorporate in the certificate or memorandum all essential data in the claim in order that the copy retained in the XC-folder will be self-explanatory. The *original* signed certificate or memorandum will be returned with the application and XC-folder to the originating activity.

(5)] The Adjudication Division will *not* notify a claimant of its determination when the claim has been referred to it only for certification of entitlement. Such notification and the right of appeal will be given by the activity which referred the claim.

b. [**Accrued PFOP Authorized by Adjudication.** The Adjudication Division has complete responsibility for the development and final disposition of a claim for the gratuitous portion of funds in PFOP accounts under regional office control (maintained by the Hines DPC) for payment as accrued and, after transfer (redeposit) of VA hospital PFOP funds, when reimbursement is the only basis for payment as PFOP accrued (par. 37.24 and 37.43).

(1) Upon completion of any necessary development, the accrued gratuitous funds in the PFOP account will be disposed of by award or disallowance action, as appropriate, in accordance with the provisions of subchapter IV of this chapter.

(2) Adjudication will notify the claimant(s) of the action taken including the right of appeal.]

37.30 PFOP DISTINGUISHED FROM FDIB

a. **General.** As explained in paragraph 28.09, prior to April 30, 1951, amounts due incompetent hospitalized veterans without dependents, and for whom no fiduciary had been appointed, were deposited in an account entitled "Funds Due Incompetent Beneficiaries." Effective May 1, 1951, all deposits then remaining which were *deposited on or after August 8, 1946*, were transferred to Personal Funds of Patients. [The only FDIB accounts now in existence are those containing funds deposited prior to August 8, 1946.]

b. **Release of FDIB.** Responsibility for disposal of amounts in FDIB at the date of the veteran's death is vested in the Finance activity.

c. **Action by Adjudication Division.** Adjudicative action is not required except when Finance so requests:

(1) The file will be reviewed to determine that payments were not being made in violation of VAR 1557(B). Action to discontinue payments retroactively will be taken only if there was evidence in the VA prior to the date of death indicating that the veteran's estate equaled or exceeded $1,500, after full development of the facts.

(2) Funds deposited in FDIB for periods prior to August 8, 1946, are payable as accrued under 38 U.S.C. 3021 [only under] the most improbable factual circumstances [of] the death of a veteran prior to August 8, 1947, and claim for accrued filed prior to the expiration of the 1-year period following death. The Adjudication Division will certify to the existence of a bar to payment of any such funds as accrued under 38 U.S.C. 3021.

SECTION E. FUNDS WITHHELD FOR FOREIGN BENEFICIARIES (VAR 2008)

37.31 SCOPE

[This section provides instructions and procedures for the payment of benefits which were held in the special deposit account established by Public Law 828, 76th Congress, as amended, and which were due and unpaid to foreign beneficiaries at the time of death.

a. **Jurisidction**. Exclusive jurisdiction over these cases is vested in the Washington Regional Office (par. 15.39).

b. **References**. 38 U.S.C. 3109 (VAR 1653) provides the basic provisions governing the release of withheld benefits to the beneficiary *prior* to death. The payment of *accrued* in these cases is subject to the limitations outlined in 31 U.S.C. 125 and VAR 2008. (See also par. 15.41.)]

37.32 LIMITATIONS

a. [**Benefits Payable.**] When the deceased beneficiary died prior to filing claim for resumption of payments withheld or paid into the special deposit account, the accrued benefit is limited to the amounts withheld prior to the date of discontinuance of the award under Public Law 828, 76th Congress, as amended, and is payable on the basis of ratings or decisions in effect at the date of the payee's death.

b. [**Claims.** A] claim must be filed within 1 year after the death and perfected by the submission of evidence *within 6 months* after the date of request. [(See par. 32.09 re application form.)]

37.33 PERSONS ENTITLED

Accrued under the provisions of VAR 2008 is payable as follows:

a. **Upon Death of the Veteran**

(1) To the widow or widower;

(2) To a child or children under age 18 at [the *date of the veteran's*] death, in equal shares.

b. **Upon death of a widow(er)**, to her[(his)] children *under age 18 at [the date of the veteran's]* death.

c. **In all other cases**, as reimbursement to the person who bore the *expenses of burial* (but not expenses of last illness). [(See par. 37.44.)]

37.34 AMOUNT PAYABLE

The total amount withheld is available for payment as accrued. The adjudicator will ascertain this amount by memorandum to [the] Finance Officer.

37.35 LOYALTY CLEARANCE AND FORFEITURE

Before such accrued benefits may be awarded on the basis of relationship, it is necessary that loyalty clearance (if required under par. 7.08) of both the deceased payee and the claimant be obtained to establish that neither party had been guilty of any of the offenses of mutiny, treason, sabotage or rendering assistance to the enemy of the United States or its allies. The forfeiture provisions will apply in any case in which it has been held that the veteran or the claimant had forfeited his[/her] rights to VA benefits. (38 U.S.C. 3504) (VAR 1902 and 1904) For provisions concerning payment of this accrued benefit as reimbursement see paragraph 37.44

SUBCHAPTER III. PAYMENT OF ACCRUED AS REIMBURSEMENT

37.36 SCOPE

This subchapter provides instructions and procedures for the payment of accrued benefits as reimbursement to the person or persons who bore or were responsible for the payment of the expenses of last [illness] and burial of a beneficiary.

[a.] Payment as reimbursement is for consideration *only* when there is no one in a permitted class who would be entitled to the accrued benefit on the basis of relationship (except when paid to a claimant as sole surviving beneficiary as noted in paragraph 37.09d) [or when the law and regulations restrict payment of accrued to this basis.

b.] The provisions of this subchapter are for application, therefore, when it is determined that accrued benefits are payable and that such benefits are not to be paid based upon relationship, in accordance with the foregoing subchapters.

37.37 CLAIMS FOR REIMBURSEMENT

a. **General.** VA Form 21-601, [Application For Reimbursement From Accrued Amounts Due a Deceased Beneficiary,] will be furnished under the conditions provided in paragraph 32.09b(3) and 37.02c(2) to the person who bore the expenses of the last [illness] and burial of the deceased beneficiary or to the person who is held responsible by the unpaid creditors for the payment of their bills. (But see par. 37.44 re special deposit accounts for foreign beneficiaries.)

b. **Claim by Creditor.** A creditor may file claim for reimbursement, but must support the claim by a waiver of all charges:

[(1)] From all other creditors, and

[(2)] From any person who is shown to have an interest in the accrued benefits because of service rendered to the deceased beneficiary and who holds the creditor responsible for the payment of their claims.

c. **Estate as Claimant**

(1) **General.** Claim may be filed by *one* of the coexecutors or coadministrators of an estate (any award to the estate, however, must be prepared in favor of the coexecutors or coadministrators as appointed by the court). Formal application on VA Form 21-601 must be filed, supported by a certified copy of the letters of administration or letters testamentary bearing the signature and seal of the appointing court. (See also par. 37.41.)

(2) **Estate Closed Prior to Approval of Award.** If, prior to the approval of an award, the VA is placed on notice that the estate has been closed, a certified copy of the discharge of the fiduciary, including the court order of distribution, will be obtained and payment made to the distributees as set forth therein.

(3) **No Administrator or Executor Appointed.** When no administrator nor executor was appointed for the estate of the deceased veteran or beneficiary, or of a claimant who died prior to receiving payment (see par. 37.09c), a claim may be filed on VA Form 21-609, [Application For Amounts Due Estates of Persons Entitled to Benefits,] by a person who assumed the informal distribution of the veteran's or beneficiary's estate using assets of the estate for payment of the expenses.

[(a)] Distribution may be made to the person or persons entitled under the intestacy laws of the State of the decedent's domicile with due regard to exemptions and allowances, the order of payment of debts, and heirs, upon the execution of VA Form 21-121, [Application For Burial Allowance and Accrued Amounts, Payable As

Reimbursement,] by each such person; or payment may be made to one heir or creditor upon the unconditional written consent of all other heirs and/or creditors.

[(b)] However, when the personal funds of an individual were used to pay the expenses of last [illness] or burial, such person is the proper claimant entitled to the accrued payable as reimbursement, including the person who paid the expenses of last [illness] and burial of a claimant who died prior to receiving payment.

d. **Claim Not Filed During Lifetime of Person Who Paid Expenses.** If a person whose personal funds were used to pay the expenses of [ ] the last [illness] and burial, dies before filing claim (formal or informal) for the [ ] accrued benefit, no payment will be made.

37.38 DEFINITION OF LAST [ILLNESS]

"Last [illness]," for the purpose of adjudicating claims for reimbursement, is the immediate attack which ends in death. If the attack is acute, the beginning of the attack will be taken as the commencement of the last [illness.] If the attack is not acute, it will be regarded as commencing at the time the beneficiary became so ill as to require the regular and daily attendance of another person until death.

[NOTE: Expenses of last illness are not reimbursable in payment of accrued from special deposit amounts withheld from foreign beneficiaries (par. 37.33c and 37.44a).]

37.39 ALLOWANCE ITEMS OF EXPENSE–STATEMENTS OF ACCOUNTS

a. **General.** Payment of accrued as reimbursement is not limited as to items approvable [(notwithstanding they may be considered as duplicate items)] nor the amounts thereof, provided they are properly expenses incident to the last [illness] and burial of a beneficiary (veteran, widow/er, etc.). Except as provided in subparagraph c and f below, claims for reimbursement will be supported by bills covering the expenses incurred, showing the dates and nature of services rendered, for whom incurred, and, if fully paid, receipted to show by whom payment was made. [VA Form 21-8049, Request For Details of Expenses, may be used (Section V checked for completion) in development for this purpose.]

b. **Physicians.** Approvable charges for medical treatment will be limited to the actual period of last illness.

c. **Medicines.** Bills covering the cost of medicines will not be required when the claimant alleges that medicine was bought for cash, and it is apparent that the amount claimed is reasonable and consistent with the character and duration of the last illness.

d. **Nursing.** Charges for registered and nonregistered nurses' services rendered from (and including) the established date of commencement of the last illness through the date of death will be approved. Charges for non-registered nurses' services performed by a member of the same household will be approved in an amount not to exceed [amounts consistent with charges made in the community for such nonprofessional services.]

e. **Transportation Expenses.** The expenses incurred for the transportation of the body of a deceased veteran (or other beneficiary) to the place of burial, and for an attendant or escort *to and from* the place of burial, are payable as reimbursement from accrued benefits without regard to the restrictive provisions as to hospitalization by the VA or shipment by Government bill of lading, etc., imposed by VAR 2605 or 2606. [However, when the expenses of the transportation of the body of a deceased veteran were partially or completely paid by the VA in connection with a burial claim (par. 43.14), only those expenses in excess of the amount reimbursed by the VA may be claimed.]

f. **Miscellaneous Items**

(1) Charges for items essential to emergency treatment such as ambulance or other conveyance to a hospital, summoning or procuring medical assistance and arranging for proper medical care from the commencement of the last illness, are properly allowable.

(2) All charges for rent, board, gas, electricity, coal, wood, etc., will be disallowed unless it is clearly shown that such expenses were incurred by reason of the beneficiary's last illness; as, for instance, the necessity for hiring additional quarters for nurses or when special arrangements for the comfort of the sick person had to be made. A charge for rent and/or board made by a member of the same household will be allowed in an amount not to exceed $5 per day.

(3) Charges for groceries, furniture and clothing will also be disallowed, unless the criteria in the foregoing subparagraph is met. Only such groceries as can be classed as special diet or especially needed for the beneficiary, and such articles of furniture and clothing as are clearly for use in the sickroom may be allowed. Receipted bills will not be required for such groceries if warranted by the character of the illness.

(4) [If] the beneficiary is shown to have died under conditions which made it necessary to destroy furniture or bedclothing for sanitary reasons, or when damage is incurred by fumigation, such charges may be allowed upon the basis of the claimant's affidavit, corroborated by that of two competent witnesses, setting forth the actual value of the articles destroyed or the damages incurred and the reason therefor.

37.40 POLITICAL SUBDIVISION–TAXES

a. **Payment by Estate or Personal Funds.** The provisions of VAR 2002 are not a bar to the payment of an accrued amount to the estate of a deceased beneficiary or to an individual as reimbursement when estate or personal funds were used to pay an expense incurred by a political subdivision of the United States, or of a foreign government, in connection with the last illness and burial. No payment, however, will be made by the VA to such political subdivision on the basis of a showing that the estate or an individual is responsible for such expenses.

b. **Federal or State Taxes.** Federal or State taxes are payable as proper charges against an accrued amount payable as reimbursement of the expenses of last illness and burial.

c. **Homes for Aged and Infirm.** Any claim asserted by a home maintained in whole by public funds must be disallowed. When death occurs in a home (other than a State soldiers' home), inquiry should be made as to whether the institution is maintained in whole by public funds and, if not, whether the beneficiary was an inmate under contract, made upon entrance, to furnish support during life and to effect burial at death. The allowance or disallowance of a claim from an official of a home (other than a State soldiers' home) depends upon the nature of the beneficiary's contract made with the home upon admission.

d. **Escheat.** An accrued amount payable as reimbursement will not be awarded in any instance when there is of record a statement from any source (public or private) that such benefit, if paid, will escheat to the State. In the absence of such a statement, no inquiry will be made by the VA as to the possibility of escheat.

37.41 PRIORITY OF PAYMENT

No priority of payment will be accorded any expense incident to the last illness and/or burial, except that when [payment of] part of the expenses of last [illness] and/or burial is made from funds of the deceased veteran's or beneficiary's estate, and the balance is paid from the personal funds of a relative or friend, reimbursement to such relative or friend will take priority over any claim of the estate.

37.42 ESTABLISHING SHARE(S) OF CLAIMANT(S)

a. Total Expenses Less Than Total Accrued Payable

(1) When the total amount of charges for expenses of last [illness] and burial does not exceed the total amount of accrued payable, each claimant will be awarded an amount equal to his[/her] share as evidenced by approvable receipted bills.

(2) Receipted bills for unpaid portions will not be required if the unpaid creditor or creditors execute a reimbursement waiver by completing [the "Reimbursement Waiver"] of VA Form 21-601 or VA Form 21-5328, [Reimbursement Waiver.]

b. **Total Expenses Exceed Total Accrued Payable.** When the charges covering all expenses are shown on the claim the following procedures will be followed:

(1) If two or more persons have paid the expenses of last [illness] and burial from their personal funds and submit approvable receipted bills or waivers therefor, their awards will be apportioned according to their established proportionate shares.

(2) If receipted bills are submitted by a claimant for only part of the expenses claimed and waivers are not furnished for the remaining unpaid charges, the claimant will be requested to submit the necessary receipted bills, or waivers in lieu thereof.

(a) When the accrued amount is payable as reimbursement under a section of law which provides for a time limitation for filing claims (VAR 2000, 2001, 2008 and 2009), a control will be established for the expiration of the period within which additional claims for reimbursement may be filed, at which time, if the necessary evidence establishing the claimant's entitlement to his full share has not been received, and claim has not been filed by any additional claimant(s), the claimant will be awarded his/her proportionate share of the accrued amount payable as represented by the expenses for which receipted bills or waivers have been submitted. If any additional claim has been timely filed for accrued subject to a statutory time limitation for the submission of evidence which has not expired, the control period will be extended accordingly.

(b) When, under the governing law, there is no time limitation for filing claim, the partial allowance procedures provided by the foregoing subparagraph cannot be applied; nor is such procedure for application when an additional claim has been timely made and evidence requested which is not subject to a time limitation. In these cases, claimants will be informed that the requested evidence must be submitted before any settlement may be made.

37.43 PERSONAL FUNDS OF PATIENTS

Although the local Finance activity is initially responsible for dispatching claims for and payment of gratuitous PFOP funds on the basis of relationship (see par. 37.27), payment of this accrued benefit as reimbursement, is vested exclusively in the Adjudication Division. Accordingly, as soon as transfer (redeposit) of PFOP funds has been accomplished as set forth in paragraph 37.28, appropriate action should be taken as provided in this chapter.

37.44 AMOUNTS WITHHELD FROM FOREIGN BENEFICIARIES

a. **Limitation.** Authority for the payment of accrued amounts from the proceeds of a withheld check or checks in the special deposit account established for foreign beneficiaries as reimbursement is limited to amount paid for *burial expenses* only. When VA Form 21-601 is furnished in this connection, the claimant will be informed of this limitation and cautioned not to submit bills covering the expenses of last [illness.]

b. **Loyalty Clearance.** Accrued payable [ ] out of funds withheld in the special deposit account will not be paid unless loyalty clearance (if required under paragraph 7.08) is obtained for both the claimant and the deceased beneficiary.

c. **Jurisdiction.** Claims covered by this paragraph are under the jurisdiction of the [Washington Regional Office.]

37.45 RAILROAD RETIREMENT ACT DEATH BENEFITS

When it is indicated that the deceased beneficiary was in employment covered by the Railroad Retirement Act, and claim for accrued is payable as reimbursement for burial expenses, inquiry will be addressed to the Railroad Retirement Board at the address set forth in paragraph [13.12b] requesting information as to whether death benefits were paid by that agency and if so to whom and in what capacity. [(Also see par. 43.17a.)]

a. **[Burial Expenses.]** If such benefit has been paid or is payable to reimburse a person who paid the decedent's burial expenses, the accrued amount payable by the VA will be available only as reimbursement for burial expenses *in excess* of those reimbursed by the Railroad Retirement Board *and* as reimbursement for last [illness] expenses.

b. **[Last Illness Expenses.]** The Railroad Retirement death benefit is payable as reimbursement for burial expenses only. Therefore, no offset is involved in a claim for reimbursement for expenses of last [illness.]

37.46 SOCIAL SECURITY BENEFITS

In the adjudication of a claim for an accrued amount payable as reimbursement, it will [ordinarily] not be necessary to make any inquiry of the Social Security Administration. [Inquiry will be made only when the total of the maximum lump sum benefit payable by SSA and VA benefits payable (as accrued reimbursement and, if for a veteran, burial allowance) exceeds the burial expenses (par. 43.17b).

a. **Last Illness Expenses.** The social security lump sum death benefit is payable as reimbursement for burial expenses only. Therefore no offset is involved in a claim for reimbursement for expenses of last illness.

b. **Burial Expenses**

(1) If there is a widow/er who was not estranged at time of death, no inquiry will be made since SS payment is by reason of relationship and is not a "Burial Allowance."

(2) Normally, development when required, will be initiated by telephone contact with the funeral director or the person who bore the burial expenses to ascertain the amount if any which has been or will be paid by social security toward defraying the cost of the burial. This amount must be deducted from the amount of the total burial expenses (including last illness expenses) in arriving at an amount of accrued VA benefits payable as reimbursement. When the deceased is the veteran, the VA burial allowance determined payable (par. 43.17b) must also be deducted in determining the accrued payable.

Example: Total Accrued Amount Available $845

Burial Expenses $900
Last Illness Expenses $100
Total $1000

SSA Lump Sum Death Payment $255
Accrued Payable . . . . . $745]

37.47 PERSONAL FUNDS–DEFINITION

a. **Borrowed Money.** Money borrowed to pay the expenses of last [illness,] burial, funeral and transportation of the deceased beneficiary is considered to be the personal funds of the person who received such loan and not the funds of the [lender.]

b. **Joint Accounts.** When the expenses of last [illness.] burial, funeral and transportation of the deceased beneficiary were paid from an account held jointly by the claimant and the decedent with the right of

survivorship, such account will be considered to be the personal funds of the claimant. In any case where conflicting evidence is of record, however, the matter will be clarified by requiring the claimant to furnish a statement from an official of the bank covering the question in issue.

37.48 RECEIPTED BILLS

a. **Acceptability.** A statement of account will be accepted if receipted in accordance with accepted business practices, such as by initialing, rubber stamp, etc. An affidavit or other statement, purporting to show payments, is not acceptable in lieu of a receipt. [(See also par. 43.09.)]

b. **Retention by VA.** Bills or receipts submitted in support of a claim necessarily form a part of such claim and will not be returned for any reason.

SUBCHAPTER IV. AWARDS AND DISALLOWANCES

37.49 GENERAL

VA Form 21-4189, Award or Disallowance–Burial Allowance or Accrued Benefits, will be used for all initial and supplemental award actions relating to the accrued benefits covered by this chapter. This form will be used also for the [record purpose] disallowance of claims for accrued benefits as provided in this subchapter.

37.50 PREPARATION OF AWARDS–GENERAL

a. **Manner of Preparation.** Award forms will be filled out in legible handwriting or by printing in ink, ball point pen or indelible pencil. When deemed desirable or preferable, at the discretion of the Adjudication Officer, entries may be made by typewriter.

b. **Number of Copies**

(1) Separate awards will be prepared for each distributee sharing in the award, or a consolidated award [to a fiduciary] may be made to two or more distributees.

(2) [Generally,] all initial and supplemental awards will be prepared in original only, except when a copy is required for the [Veterans Services Officer] (par. 12.12).

(3) When the [magnetic diskette input system] is not used, two extra copies will be prepared; one for special handling transmittal, the other for the "holding file" in the Input activity [(par. 15.33).]

c. **Signatures.** The signatures of the adjudicator and [authorizing official] and dates of signing, will be entered in the spaces provided as the authorized adjudication personnel submitting and approving the award. (See par. 15.03.)

37.51 COMPLETION OF ITEMS

a. **General.** Completion of VA Form 21-4189 will follow the general instructions provided in chapter 15, subject to the special instructions provided herein.

b. **Responsibility.** The Adjudication activity will be responsible for the completion of VA Form 21-4189 except for the following (shaded) items which will be completed in the Input activity:

(1) [ ] File Designation. [(Transaction code 05 is preprinted).]

(2) Power of Attorney Code. NOTE: The adjudicator will check the applicable block (identifying the authorized representative entitled to notice of the action, as required) for the entry of the appropriate input code by the Input [or Finance] activity.

(3) Mail Code

(4) Collection Amount

(5) Net Pay Amount

(6) Payee No. Person Overpaid

c. **Copy To (Not Input).** Check the applicable block, entering the regional office (City and State) to which a copy of the award is to be sent.

d. **Power of Attorney.** (See subpar. b(2) above.)

e. **File Number.** See paragraph 15.09.

f. **Deceased Payee No.** Enter the payee number of the deceased on whose account the amount payable accrued at time of death.

g. **Type of Claim.** Check applicable box, ["X" if accrued as reimbursement; "Y" if by relationship.]

h. **Amount Established By.** Check the applicable block, to supply the input code to indicate whether the amount available for payment as accrued is as established on VA Form 20-6560 or as established by regional office computation (pars. 37.08, 37.13 and [37.14).]

i. **Entitlement Code.** Enter the entitlement code under which the decedent would have received the accrued amount.

j. **Letter Indicator.** Unless the box "1-Dictated" is checked, computer processing will provide for a computer generated award letter, printing the following applicable paragraph as determined by the box checked in "Type of Claim." NOTE: Remaining boxes are for burial allowance use only. (See par. 37.52.)

(1) **Accrued by Relationship**

"We have authorized payment to you in the amount of $___ ___ for benefits due and unpaid at the time of death of the above payee."

(2) **Accrued by Reimbursement**

"We have authorized payment to you in the amount of $_____ as reimbursement for the last sickness and burial expenses of the deceased payee. This check has no bearing on any other VA payments which you may receive or for which you may have filed a claim."

k. **Initials and Surname of Veteran (Not Input).** Enter the "bobtailed" name of the veteran EXCEPT when preparing an award of accrued benefits by reason of the death of the veteran as the deceased person entitled.

l. **Initials and Surname of Deceased Person Entitled.** Enter the "bobtailed" name of the deceased veteran or beneficiary, as the case may be (for a master record match together with the deceased's file and payee numbers).

m. **Name and Address of Payee**

(1) The name of the payee will be entered first in this item, without any legend other than those required on awards to fiduciaries.

(2) On one line, immediately following the name of the payee, enter "a/c (*name of decedent*)."

(3) The Adjudication Division has basic responsibility for entry of the correct address. However, at the discretion of local management, the address portion on *supplemental* awards may be omitted for completion by the Input activity. (See also par. [15.13.)]

n. **Relationship to Veteran (Not Input).** Enter the relationship of the claimant to the veteran; e.g., "widow(er)," "child," "mother," or, in case of accrued payable as reimbursement to a person not in one of the permitted classes of dependents, "None."

o. **Date of Death (Not Input).** Enter the date of death of the deceased veteran or beneficiary, as the case may be, on account of whose death the award is made; e.g., ["7-29-77".]

p. **Date of Claim (Not Input).** Enter the date of receipt of the claim (formal or informal) for the accrued benefit being awarded.

q. **Award Data.** Under the column headed "Accrued:"

(1) **Amount Available (Not Input).** Enter the *total* accrued amount *available*.

(2) **No. of Payees Entitled (Not Input).** Enter the total number of persons in the preferred class entitled to share in the accrued amount available, without regard to whether claim has been made by all (par. 37.09). When the accrued benefits are awarded as reimbursement, the entry will be "R" (to indicate each claimant is being reimbursed in an amount equal to his/her share, par. 37.42) unless the total amount is being paid to the claimant for whom *this* award is being prepared, or two or more persons are to be awarded equal shares, in which cases, the actual number will be entered.

(3) **No. of Payees This Award (Not Input).** Enter the number of persons (i.e., shares) being awarded payment [ ] of the accrued amount available on *this* award. The required entry for this line will usually be "1" except for consolidated awards or when one claimant is being awarded the share(s) of any disqualified claimant (including any claimant who fails to make timely claim). If only an additional share or shares is authorized by supplemental award, only the number which reflects the number of additional "shares" [paid on *this* award] will be entered.

(4) **Amount This Award.** Enter the dollar and cents amount being authorized by *this* award.

[NOTE: The shaded items in this column (and Payee No. of Person Overpaid) will be for completion by the Finance activity when necessary.]

r. **Remarks.** Entries will be restricted to the minimum necessary for an understanding upon review of the action taken or for acceptable processing by the Input activity. [(See also par. 37.08.)]

(1) When authorizing an additional share, enter briefly the reason for nonentitlement of the other person(s).

(2) When less than the entire amount of the proceeds of returned and canceled checks is payable as accrued under VAR 2003, the amount not payable will be shown and explained as provided in paragraph [37.19b.]

37.52 NOTICE OF AWARD

The claimant and holder of valid power of attorney (including an attorney filing a declaration of representation) will be notified of the award action by dictated, computer generated or form letter. In the normal case, when the entire accrued amount is awarded to an individual claimant, whether by relationship or as reimbursement, the award will be prepared and processed for computer generation of the award letter furnishing the necessary notice to the claimant (par. 37.51j). The original will be centrally mailed, direct to the claimant.

a. **[Copies.]** A copy of the generated letter will be returned to the regional office for drop-filing in the claims folder. Two additional copies will be furnished for referral to the holder of the power of attorney if any, as will appear at the bottom portion of the letter.

b. **[Dictated Letters.]** Under certain circumstances a dictated letter may be required, such as when a partial or additional payment is authorized or additional evidence must be requested. If a dictated letter is to be used, the box "Dictated" will be checked in the item "Letter Indicator" to suppress computer generation of a letter.

37.53 RECORD PURPOSE AWARDS FOR ACCRUED

a. **[Improperly Negotiated Checks.]** Occasionally a check, partially in payment for a period subsequent to the date of termination of the award due to death, is improperly negotiated by the person entitled to the accrued amount payable on the basis of relationship or as reimbursement. When request is made for refund of the entire amount and a reply is received to the effect that the negotiator is financially unable to make restitution, the Fiscal activity may refer all correspondence to the Adjudication Division requesting that a record purpose award be approved so that, if in order, payment of the accrued amount due and payable may be authorized in behalf of such person.

b. **[Informal Claims.]** The correspondence referred to in subparagraph a above will, if timely received, be considered as an informal claim for the benefit in question. If no legal bar exists and the claimed entitlement appears to exist, any required formal claim and/or evidence will be requested by dictated letter specifying the circumstances under which the action is being taken.

c. **[Information to Finance Activity.]** The [Finance] activity will be informed of the action taken [on such referrals] if it is determined, at any time during the course of adjudication, that a record purpose award may not be approved. Upon completion of action by the Adjudication Division, the claims folder will be referred to the [Finance] activity by formal memorandum stating why the award may not be approved. The claimant will not be informed of the disallowance action by the Adjudication Division, this being the responsibility of the [Finance] activity.

d. **[Routing of Record Purpose Awards.]** In the event that a record purpose award is found to be in order, the award will be prepared as provided in the foregoing paragraphs but will be referred to the [Finance] activity, with the claims folder, for subsequent referral to the Input activity.

e. **[Recovery of Improperly Negotiated Checks.]** If prior to the approval of the record purpose award, recovery of the full amount of the improperly negotiated check is made, the award will be prepared and processed in the usual manner.

37.54 ERRONEOUS AWARDS

If an erroneous accrued award has been made, as to amount or person entitled, such award will not, under any circumstances, be canceled after transmittal to and release of payment by Hines DPC. Instead, appropriate notation will be made on the copy in file (in red pencil) as to the error discovered and the [Finance] activity informed thereof by formal memorandum for appropriate action to effect recovery.

[NOTE: An accrued award to the proper payee will not be withheld pending any recovery action.]

37.55 DISALLOWANCES

a. **General**. VA Form 21-4189 will also be used [(for claims file record–not input)] for formal disallowances of claims for accrued.

(1) [ ] When it is determined that the requirements for entitlement have *not* been met, a formal disallowance will be prepared for those cases in which:

[(a)] A separate formal claim for accrued has been filed; or

[(b)] There is an accrued amount available [(after deduction of any A/R in any account of the deceased beneficiary)] and a claim for death compensation, pension or DIC has been filed.

(2) A separate form will be prepared for each claimant, except when a claim is filed on behalf of two or more children.

b. **Preparation**. Only the following items will be completed (see par. 37.51 for instructions for completion of common items):

(1) Copy to.

(2) Power of Attorney.

(3) File Number.

(4) Deceased Payee Number.

(5) Type of Claim. Check appropriate box to identify benefit claim being disallowed.

(6) Name and Address of–person to be notified of the disallowance.

(7) Date of Death.

(8) Date of Claim.

(9) Reason for disallowance. The usual reasons for disallowances in these cases are preprinted on the form. [ ] Block "J" will be used for any other reason.

c. **Signatures**. See paragraph 37.50c.

d. **Record Purpose Disallowances**. VA Form 21-4189 will be prepared for record purposes for failure to submit evidence within 60 days, etc., under the provisions applicable to disallowances of claims for death benefits as set forth in paragraph 16.05b.

e. **Notice to Claimant**. The provisions of paragraph 16.03a, insofar as they are applicable, will be followed in furnishing notice of disallowance of a claim for accrued benefits.

37.56 DISPOSITION OF CLAIMS FOLDERS AND OTHER MATERIAL

All evidential material will be filed in the, claims folder. [The folder] will then be referred to the [Input] activity, with the award (all copies), dictated letters and enclosures, if any, securely fastened thereto. [When the accrued award represents a benefit supported by a separate folder (chapter 31 and chapter 35, vocational rehabilitation and DEA), a copy of the accrued award will be prepared for the chapter 31 or 35 folder.]

[NOTE: Disallowances of accrued and burial claims are not input transactions.]

CHART A. ENTITLEMENT TO ACCRUED BENEFITS

<table>
<tr><td colspan="6">CLAIMANTS ARE LISTED IN ORDER OF PREFERENCE WITHIN EACH CATEGORY OF DECEASED BENEFICIARY FOR EACH REGULATION</td></tr>
<tr><td>DECEASED BENEFICIARY IS:</td><td>ACCRUED UNDER VA REGULATION 2000</td><td>CHECKS NOT NEGOTIATED VA REGULATION 2003</td><td>SPECIAL DEPOSIT ACCOUNTS VA REGULATION 2008</td><td>ACCRUED LUMP SUM VA REGULATION 2001</td><td>ACCRUED PFOP VA REGULATION 2009</td></tr>
<tr><td rowspan="4">VETERAN

NOTE: SHARES OF DECEASED DISABILITY APPORTIONEES ARE PAYABLE TO THE VETERAN, IF SURVIVING; OTHERWISE TO OTHER DEPENDENT(S) OF DECEASED VETERAN.</td><td colspan="2">SPOUSE</td><td>SPOUSE</td><td colspan="2">SPOUSE</td></tr>
<tr><td colspan="2">VET'S CHILDREN MEETING PROVISIONS OF VAR 2000(D)(2) (INCLUDES UNMARRIED DEA CHILDREN UNDER AGE 23)</td><td>VET'S CHILDREN UNDER AGE 18 ONLY</td><td colspan="2">VET'S CHILDREN BY RELATIONSHIP ONLY REGARDLESS OF AGE OR MARITAL STATUS</td></tr>
<tr><td colspan="2">VET'S PARENTS IF DEPENDENT AT VETERAN'S DEATH IN EQUAL SHARES</td><td>NOT ELIGIBLE</td><td colspan="2">VET'S PARENTS IF DEPENDENT AT VETERAN'S DEATH IN EQUAL SHARES</td></tr>
<tr><td colspan="2">AS REIMBURSEMENT FOR LAST ILLNESS AND BURIAL EXPENSES</td><td>AS REIMBURSEMENT FOR BURIAL EXPENSES ONLY NOT LAST ILLNESS</td><td colspan="2">AS REIMBURSEMENT FOR LAST ILLNESS AND BURIAL EXPENSES</td></tr>
<tr><td rowspan="2">WIDOW(ER) (INCLUDING) THOSE ENTITLED TO DEA)</td><td colspan="2">VET'S CHILDREN MEETING PROVISIONS OF VAR 2000(D)(2) (INCLUDES UNMARRIED DEA CHILDREN UNDER AGE 23)</td><td>CHILDREN OF WIDOW UNDER AGE 18 AT HER DEATH</td><td colspan="2" rowspan="8">DOES NOT APPLY</td></tr>
<tr><td colspan="2">AS REIMBURSEMENT FOR LAST ILLNESS AND BURIAL EXPENSES</td><td>AS REIMBURSEMENT FOR BURIAL EXPENSES ONLY</td></tr>
<tr><td>WIFE OR HUSBAND (DEA)</td><td colspan="2">AS REIMBURSEMENT FOR LAST ILLNESS AND BURIAL EXPENSES</td><td>AS REIMBURSEMENT FOR BURIAL EXPENSES ONLY</td></tr>
<tr><td rowspan="2">CHILD RECEIVING DEATH PENSION, COMPENSATION OR DIC</td><td colspan="2">CHILDREN ELIGIBLE FOR DEATH COMPENSATION, PENSION OR DIC. (A CHILD WHO ELECTED DEA IS ENTITLED ONLY TO AMOUNTS WHICH BECAME DUE AND PAYABLE TO THE DECEASED CHILD PRIOR TO THE START OF DEA TO THE SURVIVING CHILD.)</td><td>NOT ELIGIBLE</td></tr>
<tr><td colspan="2">AS REIMBURSEMENT FOR LAST ILLNESS AND BURIAL EXPENSES</td><td>AS REIMBURSEMENT FOR BURIAL EXPENSES ONLY</td></tr>
<tr><td rowspan="2">CHILD RECEIVING DEA</td><td colspan="2">VET'S CHILDREN MEETING PROVISIONS OF VAR 2000(D)(2) (INCLUDES UNMARRIED DEA CHILDREN UNDER AGE 23)</td><td>NOT ELIGIBLE</td></tr>
<tr><td colspan="2">AS REIMBURSEMENT FOR LAST ILLNESS AND BURIAL EXPENSES</td><td>AS REIMBURSEMENT FOR BURIAL EXPENSES ONLY</td></tr>
<tr><td>CHILD RECEIVING AN APPORTIONED SHARE OF A WIDOW/ER'S AWARD</td><td colspan="2">AS REIMBURSEMENT FOR LAST ILLNESS AND BURIAL EXPENSES</td><td>AS REIMBURSEMENT FOR BURIAL EXPENSES ONLY</td></tr>
<tr><td>TIME LIMITATIONS:

FOR CLAIM
FOR EVIDENCE
ON RETRO-ACTIVE PERIOD</td><td>1 YEAR
1 YEAR
1 YEAR</td><td>NO LIMIT
NO LIMIT
NO LIMIT</td><td>1 YEAR
1 YEAR
1 YEAR</td><td colspan="2">5 YEARS
NO LIMIT
NO LIMIT</td></tr>
<tr><td colspan="6">NOTE: VAR 2000(D)(2) DEFINES A CHILD AS AN UNMARRIED CHILD OF THE VETERAN WHO (A) IS UNDER 18 YEARS OF AGE, (B) BECAME INCAPABLE OF SELF SUPPORT PRIOR TO REACHING AGE 18, OR (C) IS BETWEEN THE AGES OF 18 AND 22 AND ATTENDING SCHOOL.</td></tr>
</table>

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CHAPTER 38. DEATH AWARDS

38.01 SCOPE

This chapter provides instructions peculiar to the preparation and processing of VA Form 21-6798d, Death Award, for use in cases of deceased veterans.

38.02 PREPARATION OF DEATH AWARDS–GENERAL

Instructions common to both disability and death awards, not covered in this chapter, will be found in chapter 15. Specific instructions will also be found in other chapters under the particular subject matter which they cover.

a. **Primary Death Awards.** The primary death award (par. 15.01b(2)) must be complete, in and of itself, furnishing all data necessary for payment to or for the dependent entitled and for satisfactory aduit of the payments authorized.

b. **Apportionee Awards.** See [paragraphs 15.08a(3) and 15.61a(3).]

c. **Secondary Awards.** See [paragraphs 15.08a(4) and 15.61a(4).]

d. **Burial Award Consistency Check.** In those cases in which a non-service-connected burial claim has been paid and a DIC award is subsequently made, it is imperative that the person preparing the DIC award either prepare a supplemental service-connected burial award or take action to route the claims folder to the burial clerk for preparation of such award (see par. 43.03d).

38.03 AID AND ATTENDANCE [AND HOUSEBOUND CODES]

a. **General.** Entry in the item ["Aid/Attend"] will be required only when a surviving spouse, entitled to pension (including [Old Law and Section 306 cases when entitlement arose prior to January 1, 1979], death compensation, or DIC, or a parent entitled to DIC or death compensation, has been determined entitled to aid and attendance; [or a surviving spouse receiving DIC or Improved Pension has entitlement to the housebound allowance], or when such additional entitlement [(either aid and attendance or housebound)] is terminated. If the surviving spouse or parent has not been found to be in need of [ ] aid and attendance [or the housebound benefit,] this item will be left blank. [ ]

(1) **[Enter] Code 1 (Hospitalized–A/A Not Payable)**, only if the payee has dual status as a veteran *and* has been hospitalized "as a veteran," and *termination* of aid and attendance allowance *in each account* is required under VAR 1552. (See par. 23.03b(1).)

(2) **[Enter] Code 2 (Pay A/A)**, when the payee is determined entitled to payment of the additional allowance for A/A (including when having dual status as a veteran hospitalized for a disabling condition excepted by VAR 1552(A)(2)).

(3) **[Enter] Code 3 [(Payee Ent. H/B ONLY)**, for Improved Pension and DIC surviving spouse cases when the housebound allowance is the only SMP payable. (If the surviving spouse is also a veteran entitled to aid and attendance except for hospitalization, code 1 will be for application as provided above.)]

[(4)] [Enter] Code 0, on the award reducing benefits by reason of termination of entitlement to aid and attendance or housebound.

b. **Aid and Attendance Ratings for Surviving Spouses and Parents and Housebound Ratings for Surviving Spouses Entitled to DIC or Improved Pension.** Rating data pertaining to the need for aid and attendance or housebound are not data for input. (See also par. 47.06 re development and rating requirements.)

c. **A/A or H/B Terminated.** See paragraph 39.15.

38.04 DEPENDENCY CODES

Dependency code entries on death awards will be made in accordance with the provisions of paragraph 15.18. This paragraph furnishes specifics for dependency coding in death cases.

a. **Differential Rates.** When an award will provide for payment of a differential rate, the dependency coding will follow the basic rules to reflect all beneficiaries on account of whom the total amount is payable and, if shared, the dependent(s) to or for whom payments are authorized in this particular award. (See also [par.] 39.01e [ ].) Thus:

(1) When the award provides for a differential rate under VAR 1657(B)(1) [ ] to an additional beneficiary:

Example: [DIC] is being paid to a child (no surviving spouse) and the surviving spouse reestablishes entitlement with the child in custody.

The award to the surviving spouse should show dependency total award code "11" and dependency this award code "10" for the periods during which payments were made to the child. In accordance with paragraph 15.23c, the surviving spouse's award will be balanced by use of a type 1 withholding; the amount paid to the child being shown as withheld, with the balance (the differential rate), authorized as the monthly payment to the surviving spouse to the date of last payment under the award to the child; followed by the rate(s) payable to the surviving spouse with the child in custody.

(2) When an award will provide for a differential rate under VAR 1657(B)(2) [ ], to adjust the award to a surviving spouse by authorizing the amount payable for the children only:

Example: A surviving spouse with three children remarries and is paid beyond the date of last entitlement.

The award to the surviving spouse should show dependency total award code "83" (and not "13") for the period of adjustment. (Also see par. 39.01.)

b. **Award To Surviving Spouses With Children**

(1) **Death Compensation and Pension.** When these benefits are payable for a surviving spouse, dependency total award codes in the 10 series will always reflect all children for whom benefits are payable (or withheld), whether included in the surviving spouse's award or paid in a separate apportioned (individual or consolidated) award, because the total amount payable is increased, pro rata, for each additional child.

(a) **Child Over Age 18–Receiving Death Compensation.** When both the surviving spouse and the child are receiving death compensation, any apportioned award (master record type F) to the child, as well as the surviving spouse's award, will contain a total dependency code (10 Series) which reflects all payees in the case.

(b) **[Child Elects Improved Pension Benefits.** Children have the right to elect Improved Pension benefits only if the surviving spouse does not have entitlement to pension benefits. When an active surviving spouse's awards exists, no election of Improved Pension will be accepted from any child, either in or out of the surviving spouse's custody.

[(c)] **Child Over Age 18–Receiving DIC.** When death occurred prior to January 1, 1957 and a child over age 18 has elected to receive DIC even though the surviving spouse is still receiving death compensation (par. 42.07 NOTE), the child's award established under the DIC entitlement code (and maintained as a type B master record) will contain a total dependency code of 81. The total dependency code for the surviving spouse's death compensation award will *NOT* include the child over age 18 and in receipt of DIC. [ ]

(2) **Dependency and Indemnity Compensation.** Total dependency code entries on the [surviving spouse's] DIC award will reflect all children *under age 18,* for whom benefits are payable (or withheld) as provided in subparagraph (1) above.

(a) **Children Under Age 18.** Dependency codes will be determined as provided in subparagraph b(1) above, to reflect only the children under age 18 on account of whom the additional amount under 38 U.S.C. 411(b) is payable.

(b) **Children Over Age 18,** having a separate (and additional) entitlement, are not counted in determining dependency code entries (or rates) for the award to the [surviving spouse] or any apportionee-child (under age 18). Accordingly, regardless of the custody of such children in the case, the dependency total award code for each separate award for each child over 18 will be "81" and dependency this award will be left blank. NOTE: Master ecord type B will be established for each such DIC award to a child over age 18.

Example: When the [widow's] award at DIC rates is apportioned with the youngest child A under age 18 in her custody, next older child B under age 18 out of her custody, and the oldest child C over age 18 attending school (not counted in the apportionment), the awards would show:

Payee 10 [Surviving Spouse] & Child A (M/R Type B)		Payee 11 (Child B) (M/R Type F)		Payee 12 (School Child C) (M/R Type B)	
Total Dep.	This Dep.	Total Dep.	This Dep.	Total Dep.	This Dep.
12 10	11 10	12 *(Blank)	81 (Blank)	81 *(Blank)	

**Code 24 will be entered in change (termination) reason column for payee 11 and code 44 for payee 10, code 25 for payee 12 (no corresponding change in [surviving spouse's] entitlement.*

[(3) **Improved Pension.** When these benefits are payable for a surviving spouse, dependency total award codes will reflect all children for whom benefits are payable on this award and also on any apportioned award. If benefits are being paid on a separate award to a child out of custody (i.e. entitled in his/her own right), the dependency of such child will *not* be reflected in the total dependency field on the surviving spouse's award.

EXAMPLE: Surviving spouse receiving Improved Pension based upon no income with two children in her custody (children A and B), one child (child C) in her custody but receiving an apportionment, and one child (child D) outside of her custody; the awards would show:

Payee 10 (Surviving Spouse Children A&B)		Payee 11 (Child C)		Payee 12 (Child D)	
Total Dep.	This Dep.	Total Dep.	This Dep.	Total Dep.	This Dep.
13 12 11 10	12 11 11 10	13 12 Blank	81 81 Blank	81 Blank	81]

best copy available

c. **Awards to Children (No [Surviving Spouse]).** When there is no [surviving spouse] or the [surviving spouse] is not entitled to DIC, death compensation, or pension, but there are award(s) to or for children, identical total dependency codes on each award will reflect all children entitled, since all children, over and under age 18, have a share in the total amount (with permanently incapacitated children in DIC awards entitled to an additional amount of DIC). (See par. 15.29a(3) re consolidated awards for children below the age of majority or incompetent.)

NOTE: In DIC cases a separate award will be required for each helpless child over the age of 18.

d. **Awards to Parents**

(1) **DIC**

(a) **Sole Surviving Parent.** Only total dependency code 50 or 60 will be assigned for an award to a sole surviving parent. If this parent is unremarried, or remarried but not living with spouse, leave Dependency This Award blank. If the sole surviving parent is remarried and living with spouse, use Dependency This Award, code 52 or 62.

(b) **Two Parents Surviving.** If only one of two surviving parents (including parent in loco-parentis) files claim for DIC, the mere continued existence of the other affects the rate payable to the claimant. The rate payable is also affected by the marital status of such parent. Therefore, Dependency Total Award code 70 is assigned to any award to a parent when both are surviving, irrespective of the entitlement status of the other parent. The Dependency This Award code entry will furnish the precise information as to marital status of each such parent (for corresponding computer audit), as follows:

1. **This Award Code 50 or 60.** This parent is not living with spouse (two parents are not living together, or are divorced and this parent is remarried but not living with spouse).

2. **This Award Code 51 and 61.** When both parents are living together.

3. **This Award Code 52 or 62.** This parent is remarried and living with spouse.

(2) **Death Compensation.**

(a) The rules for DIC parents' dependency code entries in subparagraph (1) above are for equal application when both a father and mother are awarded death compensation (Tot Dep 70, This Dep 50/51/52 or 60/61/62) or there is an award to a sole surviving parent (Tot. Dep. 50/60, This Dep. 52/62 or blank).

(b) If there are two parents and only one has filed claim (a withholding of the share for another parent who has not filed claim is not required by VAR 1107), the Dependency Total Award code will be 50 or 60, as applicable. Dependency This Award will be 52 or 62 or left blank, as applicable.

38.05 WITHHOLDING DATA

Only awards to [surviving spouses] can be made subject to "Withholding"; and then only to Type 1, for apportionment and record purpose awards. See par. 15.23 re use of withholding codes.)

38.06 MISCELLANEOUS DATA FOR CERTAIN AWARDS

The following data are required input on all original and reopened awards to [surviving spouses] or, as specified, parents. These items will normally be left blank on amended awards to such beneficiaries and on any award in which they are not the "person entitled." However, if omitted from the original or reopened award, or if correction is necessary, any of these data may be introduced or corrected by inclusion in the amended award, or by referral to the Input activity for corrective input when award action is not otherwise required.

a. **[Surviving Spouse's] (or Parent's) Birth Data.** The month and the last two digits of the year of birth will be entered (by the Adjudicator) in the award item provided. Generally, the birth year furnished on the application form or as determined from or shown on other documents in file, such as marriage certificate, birth certificate of children, etc., will be accepted. In cases of conflict, proof of year of birth will be required. [ ]

b. **Date of Marriage.** The month, day and year of [surviving spouse's] marriage to the veteran will be entered (by the adjudicator) to show qualification under VAR 1052(A) or 1054.

38.07 PAY GRADE CODE–FOR DIC [SURVIVING SPOUSE] AWARDS ONLY

Pay grade codes are required input on all original and reopened DIC awards to [surviving spouses] and only those amended awards which effect a change from [death] compensation to DIC. No entry will be required in this item on any DIC awards to children or parents, nor on awards of any benefits other than DIC to any beneficiary.

a. Enter the code (from the table in app. B) for the pay grade of the veteran based on his/her rank on the date of last separation from service under conditions other than dishonorable or, if applicable a higher rank held for a period of 6 months or more meeting the requirements of 38 U.S.C. 402(d). (See par. 42.06[b.)]

b. If this code has been erroneously omitted from a DIC [surviving spouse's] award, or if a change or correction is necessary, introduction, change or correction may be effected by inclusion in an amended award or by referral to the Input activity for corrective input when award action is not otherwise required.

38.08 NUMBER OF CHILDREN–SCHOOL–HELPLESS

a. **General.** The number of school [or] helpless children being paid on each separate award must be reflected by the school and helpless child indicators *on that specific award.* These items will be left blank when there are no school or helpless children on that specific award or when the school or helpless status is not a factor. Zero will be entered to remove data in these fields when required. When a school or helpless child is being paid under an apportionee award, the school or helpless indicator for that child must be completed only on that apportionee award and not on the primary or other award in the case. (See par. 15.27 for additional information.)

b. **DIC.** Since a child over age 18 may not be paid under a primary (payee 10) DIC award or as an apportionee it is vitally important that the school or helpless child indicator appear only on the separate award (type B master record) providing payment for each such child.

NOTE: If a school or helpless child indicator is shown on a primary or apportionee's DIC award a VA Form 20-8270, C&P MASTER RECORD–AUDIT WRITEOUT, bearing message 853, DIC WID-SCH/HLP IND ERROR, will be generated for correction action.

38.09 VETERAN IDENTIFICATION DATA

Completion of the following items by the adjudicator is required on all original and reopened death awards:

a. **[Service] Dates.** The dates of entry on and release from active duty for the period of service upon which the award is based (used in determining the entitlement code) will be entered. In cases of other than death in service, when the veteran had more than one period of entitling service:

(1) If [death] *compensation or DIC* is granted, enter the dates for latest entitling war period or, if the only periods of service were other than during time of war, use the latest such peacetime period.

(2) If *pension* is granted, enter the dates for earliest entitling war period. For example, if the veteran had service in World War II and the Korean conflict, the World War II service dates (and entitlement code) would be used as the (only) entitling period.

(3) **Continuous Service.** When the service department reports shows only the beginning and ending dates of unbroken service spanning wartime and peacetime service, it is not necessary to pinpoint a specific period of service under the foregoing subparagraphs, other than by the entry of the appropriate entitlement code for the wartime or peacetime period as determined. The inclusive dates of entry and release will be used for the active duty entries.

NOTE: If the veteran died in service under conditions which preclude entitlement to death benefits and the award is based on an earlier period of service, the dates of the earlier entitling service period will be entered.

b. **Additional Service Codes.** The following codes will be entered, if applicable, in this item.

(1) **Code 1**–Additional service during a wartime period.

(2) **Code 2**–Additional service during a peacetime period.

(3) **Code 3**–Veteran had less than 90 (or 70) days' wartime service but pension entitlement is established because of service-connected disability under VAR 1003 for which [he/she] was or could justifiably have been discharged or released.

c. **Age at Death.** The veteran's age at death as computed from available birth data and the death certificate will be entered.

d. **Sex.** The veteran's sex will be entered.

e. **Date of Death.** The date of the veteran's death as determined from the death certificate, service department report of death, or as administratively determined will be entered. (See pars. 14.26c and 14.32c re administrative determinations; also see ch. 41, subch. III re service department finding of presumptive death.)

f. **Branch.** The branch of service will be determined from DD 214 or other service records in the folder and the appropriate branch of service code from appendix C, table D, will then be entered. The branch of service should correspond to the period of service as shown by the active duty dates, *EXCEPT* as provided in paragraph 29.28b for retired pay (special law 06) cases.

38.10 NOTIFICATION OF VETERAN'S POWER OF ATTORNEY

If a death claim is received within a reasonable period of time (not to exceed 1 year) after the death of the veteran and the claimant has not selected a power of attorney, the holder of the veteran's power of attorney will be recognized as also representing the death claimant and will be furnished a copy of the *initial* correspondence addressed to that claimant. (See par. 3.09.)

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CHAPTER 39. SPECIFIC DEATH AWARDS AND RELATED ACTIONS

39.01 REMARRIAGE OF A SURVIVING SPOUSE

a. General. A surviving spouse-beneficiary's statement which furnishes, as a minimum, the month and year and, if a widow, her present name will be accepted to establish the fact and date of remarriage [38 CFR 3.213(a)(2).] Remarriage may also be inferred under the procedures in paragraph 8.06. Formal proof under [38 CFR 3.205] will not be required in the absence of contradictory information in the claims folder [(38 CFR 3.213(c))].

b. Suspension of Payments. As provided in [38 CFR 3.213(b),] when information as to the month and year of marriage and/or the remarried name is not of record, the award will be suspended (reason code 15, "Surviving Spouse Remarried"), as of date of last payment if such action has not already been taken. [Application of due process procedures may be required before suspension of payments. (See par. 14.36.)]

(1) The necessary information as to remarriage and, in pension cases, income for any children in custody, if not current, will be requested by dictated letter or [Target generated development letter.] Persons having custody of children will also be requested to furnish information as to the remarriage and whereabouts of the surviving spouse if not of record.

(2) If children are involved, a 60 day control period will be established and action taken in accordance with subparagraph e below.

(3) If no children are involved, no control will be established for reply. In the absence of reply, at the end of 6 months' suspense, the surviving spouses award will be automatically terminated as of date of last payment. See message code 616, MP-6, part IV, supplement No. 6.1, chapter 3.

c. Change of Name. [If sufficient] information as to remarriage [of a widow] is of record, [process a CNAM transaction to change the name of the surviving spouse.]

d. Surviving Spouse Alone—No Children. [Use a STOP award action to terminate benefits. However, if other retroactive adjustment is required, use an amended award.

(1) Terminate benefits the first day of the month of remarriage (38 CFR 3.500(n)(1)) using reason code 15.

(2) If a female beneficiary requires a name change per subparagraph c above, take the following steps in the order listed.

(a) GAP a stop transaction from the 406 screen, but do not authorize this action.

(b) While the STOP is pending authorization, prepare and authorize a CNAM transaction to effect the changes in the person entitled and the address segments to both the PIF and master record.

(c) Authorize the STOP transaction the day after authorization of the CNAM transaction.

NOTE: Because of the order of processing, the CNAM transaction will process first, updating the address segment as well as changing the stub name of the person entitled, both in the master record and the PIF (EP 130) for the STOP transaction pending authorization. Check intercept procedures as outlined in paragraph 17.04j are to be followed when applicable.]

e. Surviving Spouse and Children. [If there are children entitled to benefits (or increased benefits) in their own right due to remarriage of a surviving spouse, develop their entitlement concurrently with the action taken on the payee 10 award. In Old Law and Section 306 pension cases, the children in custody are entitled only to Improved Pension, and development shall be taken accordingly. However, termination of a surviving spouse's entitlement to Old Law or Section 306 pension does not deprive a child not in custody of continued entitlement to the same rate of payment they were receiving as an apportionment. If it is advantageous, and they elect to do so, such children may be paid Improved Pension. If the protected apportioned rate is paid, use special law code 10, and submit a copy of the award to the Compensation and Pension Service (213B).]

NOTE: For children in the surviving spouse's custody, the income of the surviving spouse and stepparent will be used to determine children's eligibility for Improved Pension.

(1) **Suspension of Payments.** If acceptable notice of remarriage has been received but too late to avoid creation of an overpayment, the award will be suspended [and check intercept procedure followed (par. 17.04j)], pending receipt of VA Form 20-6560, Notice of Benefit Payment Transaction, (Msg 611), showing DLP, return of check and/or notice that the check could not be withheld. A 30-day control period will be maintained for this purpose.

(a) Apportioned pension and death compensation awards to any children, separate Improved Pension awards to children out of custody, and DIC awards to children over age 18 will not be disturbed at the time of suspending payments to the surviving spouse. Request will be made for an income statement (if not current) in pension cases or claim on VA Form 21-4183, Application for Dependency and Indemnity Compensation by Child (when required under [38 CFR 3.152(c)] in DIC cases), to be submitted within 60 days; and if not submitted, payments will be suspended DLP.

(b) Upon receipt of the requested evidence within 1 year of request, action will be taken, if otherwise in order and subject to action under subparagraph (2) below, to authorize the full rates payable to children.

(2) **Action on Surviving Spouse's Award.** When DLP is of record, the provisions of [38 CFR 3.657(b)(2)] will be applied to reduce or eliminate the overpayment. Action will be taken as follows for the various benefits.

(a) **Improved Pension, DIC, and Death Compensation Cases**

1. If the surviving spouse received payment at a rate in excess of that payable to the child or children in custody in their own right, the payee 10 award will be amended to authorize only the rate to which such child or children would be entitled from the 1st day of the month of remarriage to the date of last payment.

2. If payment to the surviving spouse was at a rate less than that payable to the child or children in custody, the award will be discontinued by stop award action as provided in subparagraph d above, except that the effective date of termination will be the date of last payment in the payee 10 award.

3. **Preparation of Amended Award to Surviving Spouse.** Awards will be prepared as stated above, with the following items completed as required:

a. **Award Data.** The dependency codes for retroactive periods providing for differential rates will reflect the applicable code in the 80 series for the rate payable for the children (par. 38.04a). Reason code 15 will be used for the award line entry of "None," with the applicable effective date, as well as for any differential rate line.

b. **Remarks.** Other than in those instances in which an explanation may be required for retroactive adjustment necessitated by changes in entitlement not related to the remarriage, the reason for the amendment will be concisely stated; e.g., "Surviving spouse remarried (date), DLP (date)."

Example: Improved Pension surviving spouse with 3 children in her custody remarried May 15, [1983], DLP, July 1, [1983]. Adjustment of the surviving spouse's award will show: (Assume no income for surviving spouse, stepparent, or any of the children.)

403 DISABILITY/DEATH AWARD

FILE NUMBER			END PRODUCT					NAME		
DATE	RSN	RATE	EC	DISAB	DEPEN	S H	INC	SLC	WITHHOLD	DED-OFFSET
5/1/83	15	225.75	2D		83					
7/1/83	15	00.00								

[NOTE: A dictated letter is required to fully explain the action taken.]

NOTE: The consolidated award for the children would be effective [July 1, 1983] and would award [$225.75] monthly to the remarried surviving spouse as custodian under [38 CFR 3.850(c).]

(b) **Section 306 and Old Law Pension Cases** will be adjusted as in subparagraph (2)(a) above [except that remarriage of the surviving spouse will result in the children in custody having entitlement only to Improved Pension. Children out of custody retain continued entitlement to the same rate of payment they were receiving as an apportionment. If it is advantageous, and they elect to do so, they may be paid Improved Pension. If the protected apportioned rate is paid, use special law code 10, and submit a copy of the award to the Compensation and Pension Service (213B).]

Example: Surviving spouse has two children in custody. She is receiving Section 306 pension of $159 monthly. She remarried January 10, 1984. DLP is April 1, 1984. Each child's annual income is $600 in Social Security benefits. The remarried surviving spouse and stepparent have no income.

Surviving Spouse's Award

403 DISABILITY/DEATH AWARD

FILE NUMBER END PRODUCT NAME

DATE	RSN	RATE	EC	DISAB	DEPEN	S H	INC	SLC	WITHHOLD	DED-OFFSET
1/1/84	15	55.00	28		82					
4/1/84	15	00.00								

[NOTE: A dictated letter is required to fully explain the action taken.]

Children's Consolidated Award

403 DISABILITY/DEATH AWARD

FILE NUMBER END PRODUCT NAME

DATE	RSN	RATE	EC	DISAB	DEPEN	S H	INC	SLC	WITHHOLD	DED-OFFSET
4/1/84	00	55.00	2D		82		1200			
7/15/84	24	27.00			81		600			
9/2/87	24	00.00								

[NOTE: Establish control for possible reallocation of Social Security benefits. See paragraph 39.04d.]

(3) **Determining Children's Entitlement.** The same type of benefit being paid to the surviving spouse will be payable to the children *except that* if the surviving spouse's benefit was Section 306 or Old Law death pension and remarriage occurred after December 31, 1978, the [ ] entitlement of children in custody is limited to Improved Pension (pars. 42.03b and [9.11a(2)]).

(a) A claim will not be required for any child for whom payments are being made under a separate award (including an award in suspense) nor for any child who was included in surviving spouse's claim [(38 CFR 3.152(c)(4))].

NOTE: In death compensation cases, VA Form 21-4183 should be furnished, with appropriate explanation, when there is a right to elect DIC as the greater benefit.

(b) In pension cases, necessary information will be requested by [Target-generated development letter or by dictated letter.]

(c) In DIC cases, the provisions of [38 CFR 3.107] will be applied to withhold benefits for any additional child which may be payable on the basis of a claim filed within 1 year after the date such child's entitlement arises by reason of termination of the surviving spouses entitlement. (Also see par. 39.04c.)

(4) **Action on Children's Awards**

(a) If the surviving spouse's award has been adjusted to reduce an overpayment under subparagraph e(2)(a) 1 above, awards for children will be at the "children only" rate, effective from date of last payment to the surviving spouse.

(b) [If the surviving spouse's award was terminated under subparagraph e(2)(a) 2 above, awards for children will be effective the first day of the month of the surviving spouse's remarriage and will be at the old rate which was payable for the spouse and children in custody for the month of remarriage. The award will be increased to the rate payable for "children only" from the first day of the month following remarriage to DLP, subject to prior payments.

NOTE: The procedures set forth in subparagraph (b) above are effective October 1, 1982. The provisions of 38 U.S.C. 3011 would apply as there has been an increase in the "total" benefits payable.

(c) If no overpayment to the surviving spouse exists, termination of the surviving spouse's award will be effective the first day of the month of remarriage.

1. If the rate payable for children is less than the amount previously paid for the spouse and children, the child(ren)'s award will be effective from the first day of the month of remarriage.

2. If the rate payable for children is greater than the amount previously paid for the spouse and children, the child(ren)'s award will be effective from the first day of the month of remarriage of the surviving spouse, at the old rate payable for "spouse and children" and, as of the first day of the month following remarriage, at the rate payable for "children only."]

[(d)] All child apportionee awards will be amended with reason code 40 (adjustment, child award—surviving spouse's entitlement terminated). For any original or reopened award to children whose entitlement is established because of the remarriage, reason code 00 will be used.

f. **Notice to Surviving Spouse.** In any case, when a surviving spouse's award is terminated because of remarriage, regardless of whether an adjustment is made under [38 CFR 3.657(b)(2),] notice must be given of the action taken.

g. **Termination of Marital Relationship—Restoration of Surviving Spouse's Benefits.** See paragraph [8.10b.]

39.02 MARRIAGE OF CHILD

Upon receipt of an acceptable statement [(38 CFR 3.213(a)(3))] or evidence (if required by reason of contradictory information in the claims folder) showing the marriage of a child to or for whom payments of pension, compensation, or DIC are being made, the following action will be taken, subject to the applicable provisions of paragraph 39.01.

a. **Termination of a Child's Award**

(1) **General.** Payments being made to a child in his or her own right or as apportionee, direct or through a fiduciary, will be terminated as of the first day of the month of marriage, using reason code 15, "Person Entitled Married" [(38 CFR 3.500(2)(1)).] The reason will be shown in remarks as "Child (name -if consolidated award) married (date)".

(2) **Marriage of a Male Child.** Termination of a male child's award by reason of marriage will be effected by use of [The STOP command,] unless an amended award is required under paragraph 17.02c.

(3) **Marriage of a Female Child.** Termination of an award to a female child receiving *direct* payment will be effected under the procedures for termination of a remarried surviving spouse's award under paragraph 39.01c and d. If payment to a female child is being made through a fiduciary, termination will be effected as provided in the preceding subparagraph for a male child.

b. **Adjustments to Surviving Spouse's Award**

(1) **Child Included in Payee 10 Award.** Upon the marriage of a child on account of whom payments are being made to a Surviving Spouse, the Payee 10 award will be reduced or terminated, as appropriate, in accordance with the provisions

of paragraph 24.16b. (See also par. 9.10b re loss of only or last child in Section 306 and Old Law pension cases) and [paragraph] [9.25c] for Improved Pension cases when the child is in the surviving spouse's custody.

(2) **Award Apportioned.** If the married child is receiving an apportioned share of a surviving spouse's award, the provisions of paragraph 24.16c will apply.

c. **Adjustments to Awards Involving Other Children**

(1) **Separate Awards.** Except as provided for reapportionment of awards to other apportionees (see par. 24.16c(2)), adjustments in separate awards to other children (no surviving spouse entitled) will be made effective the date of termination of the married child's award, under reason code 45. (38 CFR 3.651)

NOTE: The adjustment of the remaining child(ren)'s rates due to the loss of a child is one of the few occasions when an increase may be made in a Section 306 or Old Law rate.

(2) **Consolidated Awards.** If the married child's benefits are being paid under a consolidated award, the provisions of paragraph 15.08 will be followed in making adjustments pursuant to this paragraph.

39.03 (Deleted.)

39.04 INITIAL AWARDS TO DEPENDENTS UPON DEATH OF VETERAN

a. **Effective Date Based on Death of a Veteran After Separation From Service**

(1) **Death Before October 1, 1982.** When entitlement is established, original awards of death compensation, pension and DIC will be made effective the first day of the month in which the veteran died, provided claim is filed within 1 year from the date of death; otherwise, entitlement will be from the date of receipt of claim.

(2) **Death After September 30, 1982.** The procedures set forth in subparagraph [ ](1) above pertaining to the "effective" date still apply. However, effective October 1, 1982, the "commencing" date of payment for children or parents may not be made for any period before the first day of the calendar month following death of the veteran. The rate of benefits payable and date of claim determine the commencing date of an award to a surviving spouse of a veteran who died after September 30, 1982 (38 CFR 3.20b).

(3) **Applications Received After September 30, 1984.** The effective date of an award of death pension for applications received after September 30, 1984 shall be the first day of the month in which the veteran died, provided claim is filed within 45 days from the date of death; otherwise, entitlement will be from the date of receipt of claim. The procedures set forth in subparagraph (2) above referring to the "commencing" date of payment [apply equally] in these claims.

b. **Effective Date Based on Death in Service.** The commencing date of benefits based on death in service will be determined as provided in [38 CFR 3.400(c).] (See also [ch. 41, subch. II.])

c. **Monthly Rate—Surviving Spouse's Rate for Month of Death.** [ ] When a surviving spouse files claim which establishes entitlement commencing the first day of the month of the veteran's death after separation from service, the rate payable will be determined as follows:

(1) **Death Before October 1, 1982.** If the veteran was receiving or is entitled to receive disability compensation, pension, and/or Medal of Honor pension at the time of death, and the veteran died after November 30, 1962, and before October 1, 1982, the rate payable for the month of death under 38 CFR 3.20 will be whichever is greater:

(a) The monthly rate of the specific death benefit, or

(b) The full rate payable to the veteran. The full rate payable to the veteran includes additional compensation for dependents, special monthly compensation, allowance for aid and attendance or housebound status, Medal of Honor pen-

sion and any apportioned share(s). Use reason code 00 for this award line as well as the first award line at the recurring specific death benefits rate. However, show the veteran's entitlement code for the special rate(s) awarded for the month of death, followed by the code for the recurring rate authorized on the succeeding award line(s).

(2) **Death on or After October 1, 1982.** If the veteran died after September 30, 1982, payment to the surviving spouse for the month of death will only be made if the veteran's rate for the month of death is greater than the monthly rate of death pension or DIC to which the surviving spouse is entitled. Otherwise, payments of death pension or DIC will commence the first day of the month following death.

[NOTE 1:] Apportioned disability awards will be terminated simultaneously with the veteran's award—see par. 26.15.

[NOTE 2: When a veteran in receipt of military retired pay would have been awarded the available difference for the month of death pending total waiver of retired pay, the "veteran's rate for the month of death" is the net rate the veteran would have received had death not occurred. Even though the veteran's gross entitlement to VA benefits might have exceeded the surviving spouse's rate, the surviving spouse is not entitled to payment for the month of death if the veteran's net rate would have been less than the rate payable to the surviving spouse in his/her own right.]

(3) **Apportionment Required.** If the surviving spouse is entitled to the veteran's disability rate for the month of death, and the award is to be apportioned, the child's apportioned share for the month of death will be the same apportioned rate payable for such child for the month after the month of death, based on the recurring death benefit rate, and not the veteran's disability rate. The surviving spouse's benefit for the month of death will be the difference between the veteran's disability rate, and the child's apportioned share.

(4) **Veteran EOR or ORP Case.** If the veteran was receiving or entitled to receive only emergency or Reserve officers' retirement pay, the surviving spouse will not be eligible for payment of DIC or death pension for the month of death. EOR or ORP unpaid through the date of death is payable as accrued.

(5) **Restrictions.** It is important to remember that 38 CFR 3.20 is applicable only to surviving spouse awards and then only if entitlement to death benefits commences the first day of the month of the death of a veteran who was receiving or was entitled to receive payments of other than emergency or Reserve officers' retirement pay.

(a) If the surviving spouse's entitlement is limited to death pension commencing the first day of the year following the year in which the veteran died because of excessive income during the year of death, 38 CFR 3.20 is not for application.

(b) If the surviving spouse's award of DIC or death pension is effective as of the first day of the month of the veteran's death (death after November 30, 1962 and before October 1, 1982), or commences as of the first day of the month following the veteran's death (death after September 30, 1982) and we later determine the veteran was entitled to a greater rate, prepare an amended award to pay the surviving spouse the increased monthly rate for the month of death. (See also par. 37.08 re record purpose posthumous disability awards.)

d. **Improved Pension and Reallocation of Social Security.** If Social Security recipients are receiving the maximum family Social Security benefit, there is generally a reallocation of benefits when a member of the family loses entitlement. Develop and/or control Improved Pension cases involving receipt of Social Security by three or more family members at least one of whom is a child under 18 at the time of award preparation as follows:

(1) Notify the surviving spouse with children in custody, and/or custodian of children out-of-custody, to inform the VA of any [ ] reallocation of Social Security benefits due to a child attaining 18.

(2) Establish a future diary control using reason code 30 on all awards for children under 18, except for an award prepared solely for the eldest or only child under 18. Establish the control for 2 months prior to the month in which the eldest child turns 18. Annotate the award(s) with the reason for control as follows: "Diaried for possible reallocation of Social Security benefits when _____(name)_____ turns 18."

(3) When the control matures, notify the surviving spouse with children in custody, and/or custodian of the remaining children under 18 to furnish the new amount of Social Security payable within 60 days, and advise the payee that failure to do so may result in suspension of benefits.

NOTE: Take action in accordance with subparagraph (3) above in conjunction with award action when an award is prepared and there is a child turning 18 within 2 months.

(4) If a change in Social Security is reported, take action to either adjust or terminate the running award(s) as appropriate.

e.] **Action When All Dependents Do Not Apply** [(38 CFR 3.107)]

(1) **Claim by Surviving Spouse or Child.** Generally, award action on a claim filed by a surviving spouse within 1 year following the date of the veteran's death will not be delayed simply because it is shown that there is a child (not included in the claim of record) for whom a claim has not been filed; nor, on a child's claim, when the surviving spouse has not filed a claim. Necessary inquiries will be made to locate such additional dependent(s) for the purpose of furnishing an application form. However, when a surviving spouse files a Claim for Improved Pension and does not include a child in custody or a child in custody of the surviving spouse files a claim for Improved Pension without a claim from the surviving spouse, [38 CFR 3.107] is not for application as the "family unit" concept applies. The claimant will be informed that prior to further action on the claim, the income, net worth, and dependency evidence for the other potential beneficiary must be of record. Award action on a claim filed by or for a child out of the legal custody of the surviving spouse will *not* be delayed pending receipt of claims from the surviving spouse or other children.

(a) Until the expiration of the period within which a retroactive share may be awarded to such additional dependent for a period prior to the date of claim, any awards to persons who have filed claim will be at the rates payable as though all dependents had filed a claim.

(b) When a surviving spouse, has filed claim, the apportioned shares for the child or children will be withheld from the surviving spouse's award. Conversely, if there is [a] surviving spouse who has not filed claim a child for whom claim is filed will be awarded the apportioned share pending timely claim by the surviving spouse. If there is no surviving spouse and not all children have filed claim, the children who file will be paid the appropriate share based on the total number of potentially entitled children.

(c) An appropriate control will be maintained for retroactive adjustment of approved awards in the event that a claim by or for the additional dependent(s) is not received at the expiration of the period allowed. An adjustment may also be required prior to such time by reason of the death [or] marriage of such additional dependent, election by a child of another benefit, etc., prior to filing claim and establishing entitlement.

NOTE: Reliance on issuance of Msg code 880, NOT ALL W/H OR DEPENDENTS BEING PAID, will not be sufficient for control purposes.

(d) At the expiration of the control without claim being made by the additional dependent(s), the running award(s) will be amended to authorize the full rate (share) from the award effective date (with no change in reason code.)

[ ]

(2) **Claim by Parent**

(a) **Death Compensation Cases.** If there are two parents and only one has filed claim, a withholding of the share for another parent who has not filed claim is not required by [38 CFR 3.107]. The parent who has filed claim will be paid the higher one parent rate and appropriate dependency coding to support this higher rate will be used. (See par. 38.04d(2)).

(b) **DIC Cases.** When there are two parents living and only one parent has filed claim, the mere continued existence of the other parent (whose potential right continues until death or receipt of evidence of a legal bar to entitlement, other than excessive income) affects the rate payable to the claimant [(38 CFR 3.251(a)(4)).] When a determination is made that the nonclaiming parent no longer has entitlement to DIC because of abandonment of the veteran (par. 8.17), or because another person, now deceased, was last in loco parentis, the claiming parent would be allowed DIC at the rate payable when there is only one surviving parent. (Also see par. 38.04d, re dependency codes).

[f.] **Action on Receipt of Claim by Additional Dependent** [(38 CFR 3.650).] Rules for determining the effective date of entitlement for additional claimants and for the adjustment of the running award(s) from which a share should have been withheld under [38 CFR 3.107,] are found at [38 CFR 3.650.] If we did not withhold benefits and we receive a claim from

another member of the same class who apparently is entitled to share in the same benefit (pending development), follow the due process procedures of paragraph 14.36 before reducing the running award(s). At the expiration of the control period, reduce the running awards under reason code 26 (dependent added) effective the date of last payment. If a protest is received from a payee whose award is reduced, follow the contested claims procedure in chapter 36. These [procedures] are not for use in Improved Pension cases as no withholding for additional claimants will be made.

(1) If we determine that the additional claimant is not entitled, restore (or release) the full rate payable to persons on the rolls from the date of [reduction] (or entitlement).

(2) If we establish the entitlement of an additional claimant, award the claimant's full share, effective the date of entitlement, and adjust the running awards, as follows:

[(a) If the additional claimant is entitled from a date before the date of claim, reduce the running award(s) from the first day of the month following the date of entitlement.] Any resulting overpayment due to failure to withhold benefits will be created, subject to recovery or waiver of recovery.

[(b) If the additional claimant is entitled only from the date of claim, reduce the running award(s) from the first day of the calendar month following date of claim, or the date of last payment, whichever is later. In these cases, a failure to reduce the running award(s) will be considered delay due to administrative error and adjustment made under 38 CFR 3.500(b)(2) and 38 CFR 3.650(a)(2). Enter a notation "Administrative error, M21-1, paragraph 39.04d" under "remarks" on the award form, and prepare an administrative decision per paragraph 14.35b(1).

NOTE: For any case where the effective date of entitlement of the additional claimant is before October 1, 1982, the effective date of reduction of any running award(s) will be effective date of entitlement (subpar. (a) above) or date of claim or DLP, whichever is later (subpar. (b) above).

g.] **Adjustment of Existing Awards.** Cases encountered in the course of otherwise required adjudication, in which a claimant was awarded less than the full rate because payments had been previously authorized for another member of the same class, should be adjusted under the foregoing subparagraphs, without regard to the requirements of [38 CFR 3.114(a)], to authorize the retroactive increase; effective the commencing date of the award, but not prior to December 1, 1962. If the payee has died, the adjustment amount may be payable as accrued, subject to the 1-year limitation on payment of accrued covering a retroactive period.

[h.] **Adjustments Based on Claims Filed With Social Security Administration.** An application filed with the Social Security Administration on or after January 1, 1957, for survivors' benefits because of the death of a veteran constitutes a claim for VA death benefits even though VA Form 21-4182, Application for Dependency and Indemnity Compensation or Death Pension, is not received [(38 CFR 3.153).] (See also par. 32.05.)

(1) If VA Form 21-4182 has not been received at the time award action is taken, but it appears that an earlier commencing date may be established on the basis of an application allegedly filed with the Social Security Administration, the appropriate Social Security payment center will be requested to verify the date the application was filed with that agency. Upon receipt of such verification the effective date of the award will be appropriately adjusted, if otherwise in order.

(2) When an [award] is made effective from the date of claim for VA benefits which was filed more than 1 year after the date of death of the veteran and there is no indication in the claims folder that a claim for survivors' benefits was or was not filed with the Social Security Administration, the claimant will be informed of the possibility of adjustment to an earlier commencing date if a claim for such benefits was filed prior to filing the application with the VA. If the claimant responds indicating such application was filed, action will be taken as prescribed in subparagraph (1) above. [The same criteria applies to death pension claims received on or after October 1, 1984, filed more than 45 days after the death of the veteran.]

39.05 AWARD TO SURVIVOR UPON DEATH OF DEPENDENT OF A DECEASED VETERAN

a. General. Upon receipt of an acceptable statement or evidence of death of a payee, the award to the deceased payee will be discontinued under reason code 22, "Death of person entitled," and action taken as provided in paragraphs 37.01c and 37.02.

(1) If evidence is required to establish continued entitlement for one or more surviving beneficiaries, his or her payments will not be disturbed pending receipt of the required evidence within a 60-day control period which will be established for this purpose. If the evidence is not received by the expiration of the control period, any affected awards will be terminated (reason code 16) as of date of last payment. No notice will be required.

(2) When necessary evidence is received within 1 year of the request, the award(s) to any surviving payee(s) will be adjusted (reopened) as of the effective date of termination of the decedent's award [(38 CFR 3.651).] Appropriate notation will be included in "Remarks" as to the date of death, and name and relationship of the deceased. Entry of the applicable dependency codes, as necessary, will reflect the change in the number of dependents upon which the entitlement is based.

(3) Except for those instances when a statement furnishing month and year of death may be accepted under [38 CFR 3.213], proof of death of the payee, meeting the requirements of [38 CFR 3.211,] will be required in all cases.

b. **Death of a Surviving [Spouse].** The surviving spouse's award will be terminated using reason code 22 effective the first day of the month [ ] of death. The provisions of paragraph 39.01e relating to remarriage of a surviving spouse are for equal application in case of a surviving spouse's death in establishing the entitlement of children.

c. **Death of a Child.** Payment of any benefits or share of benefits to a child who has died will be terminated effective the first day of the month of death [(38 CFR 3.500(g)(1)).] Awards to surviving beneficiaries will be adjusted as provided below.

(1) **No Surviving Spouse—Consolidated Award to Children.** The consolidated award will be adjusted to pay the [ ] rates payable to the surviving children by reason of exclusion of the deceased child. The effective date will be the first day of the month of death[, unless an increase in "Total Benefits" is payable, in which case the effective date shall be the first day of the calendar month following the death of the child.]

(2) **Surviving Spouse Entitled**

(a) **DIC Being Paid to Child Over Age 18, Now Deceased or Separate Entitlement Under Improved Pension.** Since the award to such a child is a separate and additional benefit, there will be no adjustment made in the award to the surviving spouse or to any other children in that case.

(b) **Apportioned Award.** If the deceased child was receiving an apportioned share of a surviving spouse's award, the surviving spouse's award will be adjusted under the applicable provisions of the end-of-[month] rule to authorize payment to the surviving spouse of the amount not paid to the child who died [(38 CFR 3.500(n)(2))]. However, if the deceased child was not the only apportionee, a special apportionment will be made authorizing the increased share(s) to the surviving child(ren) based on the reduced dependency code, from the date of termination of the deceased child's award; with the surviving spouse's share being the balance remaining of the total amount payable based on the continued dependency code, including the deceased child, until the appropriate effective date for reduction or termination required to reflect loss of the dependent (see par. 24.16c).

(c) **Child Included in Surviving Spouse's Award.** If the award to a surviving spouse included an additional amount for the deceased child, reduction, or termination of the payee 10 award will be effected as provided in paragraph 39.02b.

d. **Death of a Parent**

(1) For DIC cases, see paragraph [9.18.]

(2) For death compensation cases, see paragraph [8.23b.]

39.06 CHANGE FROM ONE BENEFIT TO ANOTHER

Changes in a beneficiary's entitlement from one type of benefit to another will be effected by amended award action using reason code 30 and reflecting the change in entitlement code as provided in paragraph [15.30c.] Detailed instructions for effecting these changes in specific types of cases are furnished in other paragraphs as follows:

a. An election by the surviving spouse, or child when there is no surviving spouse entitled, or by a parent, from death compensation to DIC. (See ch. 42, subch. II.)

b. Payment of DIC or death compensation following a prior award of death pension benefits. (Pars. 34.06b and 34.08b.) See also paragraph 38.02d regarding review of burial awards.

c. [Possible] change in entitlement of a child in receipt of an apportioned share of Section 306 or Old Law pension to Improved Pension upon the termination of the surviving spouse's entitlement. (See par. [42.03b.])

d. An election by the surviving spouse, or child when there is no surviving spouse entitled from Section 306 or Old Law pension to Improved Pension. (See ch. 42, subch. I.)

39.07 IMPRISONMENT IN PENAL INSTITUTIONS

a. **Discontinuance or Reduction Because of Imprisonment.** Reduction of DIC or death compensation payments or discontinuance of pension payments to a surviving spouse, child or parent(s) pursuant to [38 CFR 3.665 (38 U.S.C. 3113) or 3.666] (38 U.S.C. 505) will be effected under the applicable provisions of paragraph 24.07 relating to imprisoned veterans.

b. **Surviving Spouse Imprisoned—Discontinuance of Pension.** In the termination notice, an imprisoned surviving spouse who was receiving or entitled to receive pension on account of a child or children will be informed of the effect such imprisonment will have on their rights and will be requested to furnish information concerning their individual incomes, net worth, and the name and address of the person or persons responsible for their care during the imprisonment.

(1) Payments of pension to or for a child or children will be awarded, effective the 61st day of the surviving spouse's imprisonment, in the same manner and at the rate payable as if there were no surviving spouse, provided that the combined income of the child and the custodian is not excessive and net worth does not constitute a bar.

(2) If the surviving spouse's award was apportioned for a child, payments to or for such child will not be disturbed. Income evidence and net worth will be requested for submission by the child's custodian, or the child, if of age of majority, within 60 days, if current evidence is not of record.

(a) If the reply shows a bar to entitlement due to excessive income or value of estate, the apportioned award will be discontinued as of date of last payment, using reason code 11, "Excess Income," or 12, "Excess Net Worth," as appropriate.

(b) If no reply is received at the expiration of the control period, payments will be discontinued as of date of last payment, using reason code 16, "Failure To Furnish Evidence."

(c) If satisfactory income evidence is received the child will be awarded the full (nonapportioned) rate. Reason code 40 will be used.

(d) In Improved Pension cases, an adjustment to an apportioned award to a child in the "legal custody" of the surviving spouse may result in either a termination or reduction in the child's award. This adjustment will be effective the later of either the date of last payment or the date of termination of the surviving spouse's award.

(e) In Section 306 and Old Law cases, any award to children either in or out of the surviving spouse's custody will be at the Improved Pension rates.

c. **Surviving Spouse Imprisoned—Reduction of DIC or Death Compensation.** In the award notice, an imprisoned surviving spouse who has eligible children will be provided notification that apportionment may be made to the children and the surviving spouse will be requested to advise whether an apportionment is desired. The surviving spouse will be requested to furnish the name and address of the person or persons responsible for their care during the imprisonment. See paragraph 24.07b(4) regarding apportionment criteria.

(1) When an apportionment is to be authorized, payment will be awarded, effective the 61st day of the surviving spouse's imprisonment.

(2) The amount of the apportionment will be limited to the amount of payment which is not payable while the surviving spouse is imprisoned.

d. **Child Imprisoned—Pension.** The award(s) to a surviving spouse or another child or children (in Section 306 and Old Law cases) who have continued entitlement will be adjusted under reason code 28, effective the 61st day of a child's imprisonment, as though the imprisoned child did not exist.

(1) When the only eligible child is imprisoned, the surviving spouse's status becomes the same as that of a surviving spouse without children, and, in a pension case, is subject to income limitation as such.

(2) If the annual income questionnaire or other current evidence reflecting income is available, a decision may be predicated thereon. If such evidence is insufficient or not on hand, or if a borderline situation is indicated, development must be undertaken as required in the foregoing subparagraph b(2). Such development will not be required to determine a surviving spouse's continued entitlement if there is at least one other child who is eligible.

e. **Child Imprisoned—DIC or Death Compensation Cases.** If there is an eligible surviving spouse, or if there are any other children, the amounts not paid to the imprisoned child may be apportioned to the surviving spouse or children.

[(1)] When an apportionment is authorized, payment will be awarded effective the 61st day of the child's imprisonment. See paragraphs [15.32a(10) and] 24.07b(4).

[(2) If there is no eligible surviving spouse, nor any other children, the award will be adjusted to one-half of the veteran's 10 percent rate using special law code 10 without a withholding. See paragraph 15.32a(10).]

f. **Parent Imprisoned.** If two parents are both entitled to DIC and were living together prior to the time the DIC payable to one parent was reduced due to incarceration, they are to be considered as two parents not living together for the purpose of determining entitlement to DIC. Should the imprisoned parent's award be less than one-half of the veteran's 10 percent rate, no adjustment to the award will be made. For these cases, a parent's DIC award will be subject to reduction below the incarcerated rate due to increased income, or a parent's death compensation award would be subject to termination should net worth become excessive. Therefore, current income and net worth data will be maintained the same as with other parent cases.

g. **Recommencement of Payments and Other Related Readjustments**

(1) **General.** Upon receipt of notice from any reliable source that an imprisoned surviving spouse, or child or parent(s) has been released from prison, DIC, death compensation and pension payments will be resumed, if otherwise in order, effective the date of release if notification is received within 1 year thereof; otherwise the effective date will be the date of receipt of notice [(38 CFR 3.666(c)).]

(2) **Release of Imprisoned Surviving Spouse With Eligible Child.** For pension cases evidence of the surviving spouse's income (and net worth) will be requested, and in all cases information as to whether the child or children are remaining in his/her custody. Upon the release of a beneficiary who was receiving Section 306 or Old Law benefits prior to their imprisonment this benefit will continue to be payable providing the income and net worth are within the applicable limits.

(a) **Children's Awards**

1. Awards to children who were not in the surviving spouse's custody at the time of imprisonment, except in Improved Pension cases, will be adjusted to the apportioned rate effective as of the dates provided in the foregoing subparagraph, or, if an overpayment would result, date of last payment.

2. The award(s) to a child or children who are restored to the surviving spouse's custody will be discontinued as of the effective date of the surviving spouse's award or, if an overpayment would result, date of last payment.

3. Reason code 40 will be used on all actions adjusting or terminating children's awards under this subparagraph.

(b) **Surviving Spouse's Award.** The surviving spouse's award will be made subject to any payments made to or for a child or children subsequent to the effective date of reentitlement by awarding the difference between the rate paid and the total payable through the date of last payment to the child(ren).

(3) **Release of Imprisoned Child**

(a) **Surviving Spouse Entitled.** If the imprisoned child is released, the surviving spouse's award will be adjusted under reason code 28 to include this child as of the date provided in the foregoing subparagraph (1).

1. If the imprisoned child was the only child and the surviving spouse's pension award was discontinued because of income exceeding the limitation for a surviving spouse alone, resumption from the date of release will be contingent upon timely submission of evidence reestablishing entitlement.

2. If the imprisoned child is released and legally out of the surviving spouse's custody any [ ] Old Law surviving spouse's awards and apportioned awards for any other child(ren) will be adjusted as provided in the foregoing subparagraph (2).

(b) **No Surviving Spouse—Another Child or Children.** All awards will be adjusted under reason code 28, as of the date of release or receipt of notice of release, as appropriate, or if an overpayment would result, from date of last payment, and adjustment made as provided above.

Example No. 1: Widow in receipt of Improved Pension imprisoned 10-18-[82.] Only one eligible child [(in "legal custody" of the widow)] (born 6-9-[68]. Child was receiving apportionment of $40 monthly, child and custodian have no income.

Widow's Improved Pension award is terminated screen 406 effective 12-18-[82.]

Child's Award

403 DISABILITY/DEATH AWARD

FILE NUMBER		END PRODUCT			NAME		
DATE	RSN	RATE	DISABDEPEND	S H	INC	SLCECWITHHOLD	DED-OFFSET
12/18/82	40	75.25	81-81		0000	2D	
6/9/86	24	00.00					

[NOTE: A dictated letter is required to inform the custodian of the basis for the change.]

NOTE: Complete income information will be entered for the child and any person legally responsible for the child's support.

Example No. 2: Widow, in example No. 1, released 6-20-[83.]
Entitlement reestablished and award action taken 8-7-[83.]
DLP 8-1-[83.]

Child's Award

DISABILITY/DEATH AWARD

FILE NUMBER				END PRODUCT			NAME			
DATE	RSN	RATE	EC	DISAB	DEPEN	S H	INC	SLC	WITHHOLD	DED-OFFSET
8/1/83	40	40.00	2D		11/81					
6/9/86	24	00.00								

Widow's Award

403 DISABILITY/DEATH AWARD

FILE NUMBER				END PRODUCT			NAME			
DATE	RSN	RATE	EC	DISAB	DEPEN	S H	INC	SLC	WITHHOLD	DED-OFFSET
6/20/83	60	231.16	2D		11-10		1000		1-75.25	
8/1/83	27	266.41							1-40.00	
6/9/86	44	214.16			10-10				0	

[NOTE: A dictated letter will be required to inform both the surviving spouse and the custodian of the basis for the awards.]

(4) **Release of Imprisoned Parent—DIC.** For those cases where an imprisoned parent's payment status was changed from that of two DIC parents living together to two parents not living together, upon release from imprisonment, payment status will be restored to that of two DIC parents living together. It will be presumed that the parents are reunited unless there is evidence to the contrary.

39.08 [(DELETED)]

39.09 (DELETED)

39.10 APPORTIONMENT CASES

a. **General.** Subject to the applicable provisions of [38 CFR 3.450,] apportionment of death benefits will be made in accordance with [CFR 3.459] through [3.461] effective as provided by [38 CFR 3.400(E)] except that, when warranted by the equities and demonstrated hardship, awards may be specially apportioned under [38 CFR 3.451.] Excepted as provided in subparagraph b below the instructions in this paragraph are intended only for cases involving regular apportionments. (See subpar. b for Improved Pension cases.)

b. **Special Apportionments.** The provisions of [38 CFR 3.451] and [3.460(c)] and paragraph 26.05, insofar as they are applicable, are for equal application in Improved Death Pension cases, including the provisions for treatment of appeals as contested claims. The formal memorandum required by paragraph 26.03 in disability cases will be required in Improved Death Pension cases. Special law code 13 will be assigned in special apportionment cases except for Improved Pension, Spanish American War, Indian, and Civil War apportionments.

c. **Rates Payable.** Regular apportionments of Section 306 and Old Law death pension and compensation will be at the rates provided by the appropriate table in appendix B, subject to the provision that a consolidated award for *ALL* the children will be at the full statutory rate less only the amount provided as the surviving spouse's share. This means only that in pension cases VA might pay the children a few pennies more by taking the total children's share from the chart rather than multiplying the share for each child by the number of children. (See also par. 15.24d(3).)

(1) The additional amount payable for any child or children in custody will be added to the surviving spouse's share, except that any amounts payable for a child in the surviving spouse's custody but living with someone else, may be apportioned if the surviving spouse is not reasonably contributing to the child's support [38 CFR 3.450(e).] Any amounts payable for children not in custody will be deducted from the surviving spouse's award and shown as a type 1 withholding.

(2) The additional amount awarded because of the surviving spouse's need for aid and attendance or housebound is *NOT* apportionable [(38 CFR 3.459 (b), 3.460] and [3.461(b)(2)).]

d. [**Child Leaves Surviving Spouse's Custody, Section 306.** Take the following action upon receipt of notice that a child has left the custody of the surviving spouse:

(1) If we received notification from the surviving spouse, take prompt action to reduce the surviving spouse's award under reason code 27, effective the first of the following month or date of last payment, whichever is the earlier (38 CFR 3.400(e)(2)). Withhold the amount payable as an apportioned share to such child. Then take action under paragraph 12.01 to pay the child from the same effective date.

(2) If we received notification from a third-party source, follow the due process provisions of paragraph 14.36 before taking action under subparagraph (1) above.

e.] **Termination of Apportionment.** In addition to terminations provided by future ending dates required by paragraph 15.16c in anticipation of a child's 18th birthday, termination of schooling or the 23d birthday of a school child, apportionments will be terminated and the surviving spouse's award adjusted or terminated upon the happening of the conditions provided below:

(1) **Child's Entitlement Terminates**

(a) **Child Returns to Surviving Spouse's Custody.** Adjust awards using reason code 27, as of date of last payment to or for the child. [(38 CFR 3.500(d)(1)).]

(b) **Death of Child.** See paragraph 39.05c.

(c) **Marriage of Child.** See paragraph 39.02.

(d) **Unanticipated Termination of School.** See paragraph 10.07c and [38 CFR 3.667(c).]

(e) **Election of DEA Benefits.** See paragraph 10.15.

(f) **Election To Receive Benefits in a Dual Parent Case.** See paragraph 42.30b(3).

(g) **Imprisonment in Pension Cases.** See paragraph 39.07c.

(h) **Election of Improved Pension Benefits.** See paragraph 29.08.

(2) **Surviving Spouse's Entitlement Terminates**

(a) **Remarriage of Surviving Spouse.** See paragraph 39.01e(4).

(b) **Death of Surviving Spouse.** See paragraph 39.05b.

(c) **Excessive Income or Net Worth.** See paragraph [9.11.]

(d) **Failure To Return Income Questionnaire.** See [paragraph 9.11 and 9.26.]

(e) **Imprisonment in Pension Cases.** See paragraph 39.07b.

39.11 [DIC] AWARDS TO CHILDREN PENDING DETERMINATION OF SURVIVING SPOUSE'S ENTITLEMENT

a. **General.** Whenever a determination of a surviving spouse's entitlement [ ] will be unduly delayed in a claim involving children, benefits will be awarded for such child or children, if (and when) their entitlement can be established. [ ]

[b. **All Children In Custody.** Award benefits to the surviving spouse claimant under either payee 11 or 31 as custodian under 38 CFR 3.850(c) (par. 12.16). The rate payable when all children are in custody of the surviving spouse will be at the "children only rates."

NOTE: If one or more of the children leaves the custody of the surviving spouse before a final determination is made as to the surviving spouse's entitlement, the procedure outlined in subparagraph c below must be initiated as of DLP.

c. **Child or Children Not in Custody.** If there is a child not in the surviving spouse's custody, apportionment will be required.

(1) When it is necessary to prepare VA Form 21-592, Request for Appointment of a Fiduciary, Custodian or Guardian, for children not in custody, it will be noted on the form that any awards to children will be made pending a determination of the surviving spouse's entitlement, and that benefits awarded may be subject to adjustment.

(2) Determine the rate payable from the apportionment schedule for children as if the surviving spouse were entitled.

Example No. 1: Veteran dies 4/15/84 and the surviving spouse's entitlement is pending. These are two children not in custody of the surviving spouse. Pay grade of the veteran was E-1.

Payee 31 Award

403 DISABILITY/DEATH AWARD

FILE NUMBER				END PRODUCT				NAME		
DATE	RSN	RATE	EC	DISAB	DEPEN	S H	INC	SLC	WITHHOLD	DED-OFFSET
5-1-84	00	144.00	47		12-82					
8-7-87	24	72.00			12-81					
8-8-89	24	00.00								

Example No. 2: Same facts as Example 1, except one child in custody of the surviving spouse and one child out of custody.

Payee 11 (child out of custody)

403 DISABILITY DEATH AWARD

FILE NUMBER				END PRODUCT				NAME		
DATE	RSN	RATE	EC	DISAB	DEPEN	S H	INC	SLC	WITHHOLD	DED-OFFSET
5-1-84	00	72.00	47		12-81					
8-7-87	24									

Payee 12 (child in custody)

403 DISABILITY/DEATH AWARD

FILE NUMBER				END PRODUCT			NAME			
DATE	RSN	RATE	EC	DISAB	DEPEN	S H	INC	SLC	WITHHOLD	DED-OFFSET
5-1-84	00	72.00	47		12-81					
8-7-87	44	72.00			11-81					
8-8-89	24	00.00								

(3) Control will be maintained so that in the event the surviving spouse does not establish entitlement action can be taken to adjust to pay "child(ren) only" rates and correct the dependency codes. A future date control will be established under reason code 30 for receipt of the evidence within 1 year of the date requested. The award will be annotated that control has been established and the reason therefore.

Reliance on Msg. code 880, *NOT ALL W/H OR DEPENDENTS BEING PAID,* will not be sufficient for control purposes.

d. **Surviving Spouse's Claim Subsequently Allowed.** If an award has been made for a child or children under either subparagraph b or c above, and the surviving spouse's entitlement is subsequently established, the following action will be taken.

(1) If all children were in the surviving spouse's custody, terminate the payee 11 or 31 award DLP. Pay the available balance under a payee 10 award. Adjust the payee 10 award DLP to remove the withholding.

(2) If all children were out of the custody of the surviving spouse, no action will be necessary on the child(ren)'s award. Prepare a payee 10 award with proper withholding for the child(ren) out of custody.

(3) If there were both children in and out of custody of the surviving spouse, take no action on the award for the child(ren) out of custody. Terminate the award for the child(ren) in custody DLP, and a prepare a payee 10 award from date of entitlement with appropriate withholding for prior payments and adjusted as of DLP.

Example No. 3: Same facts as in Example No. 2 above. The surviving spouse established entitlement. DLP is 7/1/84. No action is necessary on payee 11 award. Terminate the payee 12 award DLP and prepare a payee 10 award.

403 DISABILITY/DEATH AWARD

FILE NUMBER				END PRODUCT			NAME			
DATE	RSN	RATE	EC	DISAB	DEPEN	S H	INC	SLC	WITHHOLD	DED-OFFSET
5-1-84	00	423.00	47		12-11				1/144.00	
7-1-84	27	495.00							1/72.00	
8-7-87	44	514.00			11-11				0	
8-8-89	24	461.00			10-10					

e. **Surviving Spouse's Claim Disallowed.** If we cannot grant the surviving spouse's claim, prepare a disallowance and take appropriate action as follows:

(2) [In order to establish entitlement to DIC under 38 U.S.C. 418, a surviving spouse must have been married to the veteran for at least 1 year immediately preceding the veteran's death, or for any period of time if a child was born of the marriage or was born to them before the marriage.]

(3) [ ]A surviving spouse may be considered for nonservice-connected pension if entitlement to DIC [cannot be established because the veteran's death was due to the veteran's willful misconduct.]

b. **Rating Required.** [ ]The determination of whether DIC is payable as if the cause of death was service connected is to be made by the rating board. (See par. 34.06.)

(1) The rating board will continue to review all cases where the veteran was rated 100 percent at time of death for consideration as to service-connected death (par. 34.06a(2)(c).)

(a) If service connection for cause of death is denied, [consider entitlement to payment as if death were service connected.]

1. If the rating denies service connection for cause of death, but grants entitlement to payment as if death was service-connected, the award must be prepared using SL code 19 and annotated to read "DIC awarded per 38 U.S.C. [418] based on rating dated_____."

2. If the rating denies both entitlement to service connection for cause of death and to payment as if death was service-connected, any disallowance or pension award prepared must contain a remark that these issues were considered.

(b) If development is required to dispose of the issue of service connection for cause of death, and eligibility to payment as if death was service-connected exists, the rating board shall prepare a rating decision granting entitlement to this benefit and deferring the issue of service connection for cause of death.

1. In such a case the award will be prepared using SL code 19 and annotated to read "Decision of SC death deferred."

2. If subsequent rating action establishes service connection for death, the SL code 19 must be removed and the beneficiary notified of the change in status.

(2) Cases in which a veteran was rated totally disabled due to service-connected disability for the required period but was not in receipt of compensation due to receipt of retired pay will be referred to the rating board for a determination as to whether or not total benefits would have been payable for the entire period.

c. **Prohibition Against Duplication of Benefits.** If the claimant receives money or property of value based upon any cause of action for damages for the death of the veteran as a result of a judicial or administrative proceeding, settlement or compromise, DIC otherwise payable must be recouped in an amount equal to the money received and fair market value of the property received. This requirement for recoupment exists even if the award or settlement was made prior to passage of Pub. L. 95-479.

(1) Whether or not the claimant has made a positive statement that a claim has been or will be made through court action, or administrative channels, award action otherwise in order will not be withheld, inasmuch as the offset required in the event of a judgment, compromise or administrative award will not be made effective prior to the first day of the month following the month such judgment, compromise or administrative award was granted.

(a) All award letters will contain the offset requirements of the law.

(b) Upon initiation of recoupment, the claimant should be informed that although no payment of DIC may be made until the amount received is recouped, the claimant must keep VA informed of her/his current address, marital and dependency changes so that there will be no delay upon resumption of benefits.

(2) Awards will be prepared in the regular format. [The following additional specific instructions apply:]

(a) No withholding code or amounts will be shown on the award in order that when the full amount to be offset has been recouped, payments may be made automatically.

(b) The amount of offset will be shown on the award form with the statement "Subject to offset of $____ under 38 U.S.C.[418]." Attorney's fees, court costs and other expenses incident to the civil claim are not deductible from the total amount awarded or accepted.

(c) The adjudicator will route the claims folder, with [Optional Form 41] attached, instructing the Finance activity to establish a 30B accounts receivable for the amount to be recouped with a deduction for the full amount of the award.

CHAPTER 40. SPECIAL ALLOWANCES

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CHAPTER 40. SPECIAL ALLOWANCES [ ]

[SUBCHAPTER I. SPECIAL ALLOWANCE (38 U.S.C. 412(a))]

NOTE: Authority to make awards of special allowance under 38 U.S.C. 412(a) is vested solely in WRO, Washington, D.C. However, development of entitlement to this special allowance is the responsibility of the regional office with original jurisdiction (see par. 40.07).

40.01 GENERAL

The provisions of this chapter are for primary application to payment of the special allowance by the VA under 38 U.S.C. 412(a).

a. This special allowance is basically a gratuitous benefit to the surviving dependents of a member of a uniformed service who died while on active duty, active or inactive duty for training on or after January 1, 1957, or after separation as result of a service-connected disability incurred after September 15, 1940, and who was not a fully and currently insured individual under Title II of the Social Security Act. ([38 CFR 3.804])

b. The VA pays this special allowance for the Social Security Administration only to the persons as designated, and at the rates and for the periods certified by that agency.

NOTE: This special allowance is NOT payable based on service connection under 38 U.S.C. 351 or Phillippine service ([38 CFR 3.804(b)]).

40.02 DETERMINATIONS

a. **Determinations Made by VA.** When the veteran's death occurs after *separation or release from service*, and consideration of possible entitlement to special allowance under 38 U.S.C. 412(a) is in order under this chapter, the VA will determine:

(1) Line of duty and service connection of cause of death as provided in [38 CFR 3.1(k) and (m),] based on a service-connected disability incurred or aggravated after September 15, 1940.

(2) Whether discharge or release from active duty, active duty for training, or inactive duty training was under conditions other than dishonorable. (See [38 CFRE 3.12 and 3.804].)

b. **Determinations Made by Social Security Administration.** The Social Security Administration will determine and certify:

(1) Whether the veteran was fully and currently insured at the time of death.

(2) Whether there is a survivor eligible to receive benefits under 38 U.S.C. 412(a).

(3) The first month of entitlement and the amount of monthly benefits which are to be paid to each eligible survivor under 38 U.S.C. 412(a). If an eligible survivor is a child over age 18 attending school, the last month entitlement will be included.

(4) Any subsequent determination requiring:

(a) Deductions from monthly benefits; or

(b) Termination of entitlement; or

(c) Extension of entitlement for a school child beyond age 22. (See par. 40.17c.)

40.03 CLAIMS FOR SPECIAL ALLOWANCE

No special application will be required as a claim for the special allowance under 38 U.S.C. 412(a). A claim for DIC on VA Form 21-534, 21-535, 21-4182, or 21-4183 will be accepted as a claim for special allowance when it is determined that such benefit is payable.

a. When VA Form 21-4182 is received from a [surviving spouse], child or parent, an application on VA Form 21-534 or 21-535 will be obtained before rating action is taken.

b. When VA Form 21-4182 or specific inquiry regarding entitlement under section 412(a) is received from a person who has no apparent entitlement to DIC and has not filed a formal application for such benefit, a rating will be made, if required for determination of this entitlement (par. 40.02a(1)), without the necessity of first obtaining a formal application provided there is no legal bar to the payment of such allowance.

40.04 USE OF VA FORM 21-4180

VA Form 21-4180, Request for Certification by Social Security Administration, will be used for the purpose of obtaining information as to whether the special allowance under 38 U.S.C. 412(a) may be payable to an eligible survivor or survivors.

a. **When Used.** VA Form 21-4180 will be sent to the Social Security Administration when the following conditions exist:

(1) Death occurred after December 31, 1956, as a result of service performed after September 15, 1940, meeting the requirements of [38 CFR 3.804(e)] after separation from such service, as provided in paragraph 40.02a, and

(2) Claim is filed by or for a [surviving spouse], child or parent. (See par. 40.03.)

NOTE: When death occurs in service, VA Form 21-4180 will be forwarded to the Social Security Administration only if a specific inquiry or claim for such benefits is received and Form SSA-101 or SSA-101C if not of record. (See par. 40.06.).

b. **Preparation of VA Form 21-4180.** Part 1 of VA Form 21-4180 will be prepared in duplicate under the conditions prescribed in the foregoing paragraph. Care must be taken to insure that the mailing address of the transmitting VA regional office is entered in item 2 at the top of the form for return by the Social Security Administration in a window envelope, and the VA file number entered in item 3 for association with the claims folder upon return.

(1) **Items 1, 5 and 6.** The full name of the veteran will be entered with the dates of his/her birth and death. These data are of particular importance for Social Security Administration purposes when the social security number is unknown or incorrectly shown.

(2) **Item 4.** Enter the veteran's social security account number, if known. Otherwise, leave blank.

(3) **Item 7.** List, as applicable, the [surviving spouse], *all children under age 18 or in school under age 22 or helpless* and parents so that the Social Security Administration will give consideration to their eligibility for OASI benefits. Since the Social Security Administration will develop entitlement based on school attendance, it is not required that the evidence of record establish that a child over age 18 and under age 22 is attending school. However, a child over age 22 will not be listed unless helplessness or school attendance is alleged by the claimant.

NOTE: It will be necessary to list all possible claimants, [surviving spouse], children and parents, whether or not claim has been filed or on behalf of such dependents. When parents are listed, a notation should be made as to whether they have filed a claim for VA benefits.

c. **Prompt Dispatch.** VA Form 21-4180 will be promptly dispatched when the foregoing conditions exist and will not be withheld for receipt of any other evidence which may be necessary to complete the claim.

(1) **Addressee and Dispatch.** The original of VA Form 21-4180 will be signed by the adjudicator in the name of the Adjudication Officer [(item 8). Item 14] will be completed for transmittal to the appropriate Social Security office, as determined by this paragraph. [ ] The copy, initialed by the preparer, will be out-filed in the claims folder, to be removed and disposed of when the original, returned by the Social Security Administration, is filed in the claims folder.

(a) If the social security account number is known, VA Form 21-4180 will be addressed to the appropriate Social Security Administration [Program Service Center (par. 13.08a).

(b) If the social security account number is *unknown*, VA Form 21-4180 will be addressed to the Social Security Administration district office nearest the transmitting VA regional office (par. 13.08b).

(c) If foreign claimant, see paragraph 13.07a(3).

(2) **Simultaneous Transmittal of Form SSA-24.** See paragraph 32.15.

(3) **Followup Procedure.** A 90-day control will be maintained. At the expiration of that period, followup will be made by another VA Form 21-4180 (which may be a reproduction of the file copy) prominently marked "SECOND REQUEST." A 30-day control will be maintained for response to the followup.

(4) **Notice to Claimants.** In the absence of a specific inquiry, claimants will not be informed of the referral of VA Form 21-4180 and possible special allowance.

40.05 NONENTITLEMENT–DISALLOWANCE

a. **Notice to VA.** As provided in paragraph 40.06a, upon return of VA Form 21-4180 by the Social Security Administration, the adjudicator will review the form to ascertain whether a special allowance under 38 U.S.C. 412(a) may be payable. If item [11] of part II of the form shows that no such allowance is payable, the form will be filed in the XC-folder and no further action will be taken, except as provided in subparagraph b below.

b. **Notice to Claimant.** The applicant will be informed by the Social Security Administration regarding eligibility to benefits under that act. The VA will not be responsible for furnishing a notice of disallowance or right of appeal except for adverse determination under paragraph 40.02a, and then only if there is a specific claim for the special allowance under section 412(a). However, when the completed VA Form 21-4180 shows that section 412(a) certification may be made at age 60, the VA will notify and inform the claimant to contact the VA when he/she attains that age. (See par. 40.06a(2)(b).)

c. **Failure to File Claim With Social Security Administration.** See paragraph 40.06a(3).

d. **Disallowance.** As in any other case involving denial of entitlement to *an additional* benefit, a formal disallowance on VA Form 21-523 will not be required (par. 16.01b). If, in any case, the Social Security Administration has certified entitlement on Form SSA-101 or SSA-101C and it is then determined that the special allowance is not payable for any reason, the Social Security Administration [Program Service] center initiating the Form SSA-101 or SSA-101C will be notified.

40.06 CERTIFICATION OF ENTITLEMENT BY SOCIAL SECURITY ADMINISTRATION

The Social Security Administration will initiate action upon receipt of notice of death from the service department and, when there are survivors eligible for special allowance under 38 U.S.C. 412(a), furnish Form SSA-101 or SSA-101C, Determination of Award, as authority for payment. If received in a VA regional office, other than WRO, action will be taken as provided in paragraph 40.07. If the Social Security Administration

determines that there is no survivor eligible to receive the special allowance or that such benefit is not payable because there is entitlement to an old-age and survivors insurance payment, the claim will be disposed of by that Agency under the Social Security Act.

a. **Return of VA Form 21-4180**

(1) If item [10A] is checked, special allowance is payable on the basis of Form SSA-101 or SSA-101C Determination of Award, attached to the completed VA Form 21-4180 or previously forwarded to the VA Jurisdiction is in WRO (par. 40.07).

(2) If an iten [11 box] has been checked:

(a) If [item 11A] is checked, section 412(a) benefits are not payable.

(b) If [item 11B] is checked, a letter will be written informing the widow(er) -claimant (under 60 years of age), of this possible future entitlement and that she/he should contact the VA at age 60. Jurisdiction of the claims folder is not affected.

(c) If [item 11C] is checked, there is no one eligible to receive social security benefits and no further action is required with respect thereto.

(3) If VA Form 21-4180 is returned uncompleted because the claimant has failed to respond to correspondence from the Social Security Administration and the form contains the latest address of the claimant as shown in the claims folder, it will be endorsed "NAN," initialed, dated, and filed in the claims folder.

(a) However, [if] the claims folder contains a later address, another VA Form 21-4180 containing the latest address of record will be forwarded to the Social Security Administration with a notation to that effect.

(b) Upon specific inquiry regarding the special allowance, the writer will be informed that it is not possible to determine whether such benefits are payable unless and until the claimant files a claim with the Social Security Administration.

b. **Form SSA-101 or SSA-101C, Determination of Award.** Award action to authorize the special allowance will not be in order unless the Form SSA-101 or SSA-101C furnished by Social Security Administration contains the following:

(1) Name and address of each beneficiary.

(2) Monthly rate of payment.

(3) First month of entitlement.

(4) The notation "DO NOT CERTIFY. VA PAYMENT ONLY."

c. **Information and Enclosures for Award Notice Letters.** Form [SSA-101 or SSA-101C] will be accompanied either by a copy or a draft copy of the award notice letter which Social Security Administration would have released to the claimant if there were insured status under old-age and survivors insurance and any enclosures which would be sent to the applicant with the award notice letter. [These will be released with or incorporated in the notice of award (par. 40.09)].

40.07 JURISDICTION

Authority to make awards and payments of the special allowance under 38 U.S.C. 412(a) is vested in the [WRO]. Accordingly, if Form [SSA-101 or SSA-101C] is received in a VA regional office, necessary adjudicative action will be promptly taken on any other claim pending in the case, including award of DIC, if in order. The XC-folder will then be permanently transferred to the [WRO] by VA Form 07-7216, citing "M21-1, par. 2.03a(7)", for appropriate action in accordance with this chapter.

40.08 ORIGINAL AWARDS [(WRO)]

a. **VA Form 21-6798d.** Both original and amended awards of special allowance under 38 U.S.C. 412(a) will be prepared on VA Form 21-6798d, as separate awards in addition to any regular DIC awards to the same beneficiary. Only items ["Transaction Type"] through ["New Address", "Mail Code" and "Award Data"] will be completed, in the usual manner, except as modified in this paragraph. [ ]

b. **[Transaction Type.]** The award to each payee of the special allowance must process to create a separate type B master record. Therefore, when separate awards to children are made, a memorandum should be attached alerting the Input activity that the transaction type should be [11 with the modifier] "B" and not "F" [or "R".]

c. **[Special Law Code 15.** When the same person is also awarded DIC,] special law code 15 will be entered on the regular DIC award under the applicable DIC entitlement code for any beneficiary entitled to or awarded a special allowance under 38 U.S.C. 412(a). If simultaneous award action is not otherwise required, entry of this special law code on the existing master record for the regular DIC award may be effected by referral to the Input activity for necessary coding action. (See par. 15.20a(15).)

[NOTE 1: DIC Parent Award. When determining the rate payable in a DIC award to a parent, the section 412(a) allowance must be included as "Other Income" and counted in the computation of Income for VA purposes and the rate payable (VAR 1261(A)(20)).

NOTE 2:] Removal of Special Law Code 15, by amended award or Input activity coding action, will not be in order as long as the probability of entitlement to the special allowance continues. This requires that the special law code will continue to be carried in a widow[(er)]'s DIC award notwithstanding her[/his] special allowance is discontinued because of excess earnings or because, [while under age 60, the widow(er)] ceases to have [custody of] at least one child under age 18 or helpless [ ]. (Also see par. 40.05b.)

d. **[Number of Copies.]** In all cases, an original and one copy will be required, with an extra copy in fiduciary cases. The additional copy of each original award will be prepared for transmittal to the appropriate office of Social Security Administration. (See par. 40.10.)

e. **[Payee Number.]** This item will be [completed] on original awards [ ] by assignment of the appropriate payee number in the 70 series. [ ]

f. **[Veteran's Social Security Number.** The Social Security Account number shown on the Form SSA-101 or SSA-101C will be entered in this item.]

g. **[Name and Address of Payee.]** No legends will be required other than those for fiduciary payees.

[h. **Award Data**

(1) **Dependency.** Dependency coding will continue to be governed by the regular rules in paragraph 38.04.

(2) **Monthly Rate.** In the amount certified by Social Security Administration for the eligible claimant except as provided below:

(a) **Children in Widow(er)'s Custody.]** The monthly rates payable for children in the widow[(er)]'s custody will be combined with her[/his] rate and shown as a total monthly rate payable to the widow[(er)]. Separate awards for children may be combined in one consolidated award in accordance with paragraph 15.29, as modified by this paragraph, [under a payee number in the 70 series. (See also par. 40.13.)

(b)] **Divorced [Spouse] With Child in Custody.** Special allowances payable to a divorced [spouse] and a child or children in [ ] custody will not be combined into one award. Separate awards will be required to the [spouse] and to the fiduciary for the child or children, except that the children's separate entitlements may be combined in a consolidated award.

[i.] **Entitlement Code.** The appropriate entitlement code for "DIC-Special Allowance" from the table in appendix B, will be used.

[j. **Effective] Date.** The commencement date of an award will always be the first day of the month for which the individual is eligible to receive benefits as certified by Social Security Administration. For example, when Form [SSA-101 or SSA-101C] shows a commencing date as "4/70", the corresponding effective date on VA Form 21-6798d will be entered as "4-1-70."

[k.] **Ending Date[-Child Involved.]** If the special allowance is payable to or for a child or children (other than helpless children), all awards providing for payment on their behalf whether to a widow[(er)], divorced [spouse], or fiduciary will show an ending date.

(1) **General.** Except as provided below, this date will be the *end of the month preceding* the month in which the *oldest* child for whom benefits are payable attains the age of 18 years. (See par. 40.17.)

(a) For the purposes of this subparagraph, a child will attain the age of 18 years the day preceding the anniversary date of its birth. Accordingly, a child born on July 1 will be considered to have attained the age of 18 years on June 30, and the last date of entitlement for such child will be May 31, requiring the ending date entry of ["None" or "0", 6-1.]

(b) An earlier ending date will be used, however, in those *exceptional* cases in which an earlier termination date is certified by the Social Security Administration for reasons such as death, marriage or remarriage.

(2) **Helpless Children.** Awards providing payments for a helpless child(ren) will not show a termination date [when he/she is the only child under that award.]

(3) **School Children.** Awards which include payments for a school child(ren) will show a termination as of the *earliest of the following dates:*

(a) The first day of the month in which another child other than the school child attains age 18.

(b) The first day of the month in which the school child attains age 22.

(c) The first day of the month in which a child under age 22 is not in full-time school attendance during any part of the month.

[(d) The first day of the month following the month of final entitlement certified by the Social Security Administration for a school child receiving extended benefits beyond age 22. (See par. 40.17c).]

NOTE: Benefits are payable for a full month even though full-time attendance does not continue to the end of the month.

40.09 NOTICE TO PAYEE OF ORIGINAL AWARD

Notice of approval of an original award will be furnished the payee by dictated letter which will carry both the XC and SSA numbers. Copy of the award notice letter furnished by Social Security Administration will be used as a pattern.

a. The Social Security Administration district office as shown on the Form [SSA-101 or SSA-101C] will be [identified] in the letter.

b. Information will be furnished the payee that although made by the VA, payment of the special allowance is a result of claims development made by Social Security Administration.

c. Any enclosures furnished the VA with Form [SSA-101 or SSA-101C] which Social Security Administration indicates would be sent to the payee with the award notice letter if there were insured status under old-age and survivors insurance will be enclosed with the award notice letter.

d. Information reading substantially as follows will be included:

"This award is made by the Veterans Administration as a result of claims development by the Social Security Administration District Office, _____, and is in accordance with a determination made by the Social Security Administration Payment Center, _____. If you have any questions about this award you should discuss them with the Social Security Administration District Office. The happening of any of the events referred to in the enclosed instructions should be reported promptly to the Social Security Administration and Veterans Administration. These enclosures contain important information and instructions which should be carefully followed.

"Immediate notice should be given of the death or marriage of any beneficiary for whom benefits are being paid under this award. If either event should occur, any checks received thereafter must not be negotiated. Such checks should be returned to the [Washington Regional] Office, Washington, D.C. 20421, with a statement giving the date of death or marriage (married name and address) and whereabouts of any children under age 18 who may be entitled to payments.

"The Veterans Administration and the Social Security Administration should also be notified immediately if you change your address. Show both the XC and SSA numbers shown above when writing to either of these agencies."

40.10 NOTICE TO SOCIAL SECURITY ADMINISTRATION OF ORIGINAL AWARD

One copy of the completed award, VA Form 21-6798d, and two copies of the award notice letter being sent to the payee will be forwarded [ ] to the Social Security Administration payment center from which the Form [SSA-101 or SSA-101C] was received. [ ]

40.11 DELAY IN PAYMENT–RECERTIFICATION BY SOCIAL SECURITY ADMINISTRATION

In the event approval of an award of special allowance is delayed by the VA for more than 1 year after the date of approval of the Form [SSA-101 or SSA-101C] by the servicing Social Security Administration payment center, that office will be contacted by letter requesting verification of continued eligibility prior to approval of the award.

40.12 DISCONTINUANCE OF PAYMENTS

a. **General.** The Social Security Administration will authorize termination of a payment on Form 0A-C656 as required. However, temporary withholding of payments may be made by the VA based on certain notices as indicated under subparagraph b below, pending a final determination by the Social Security Administration under subparagraph c below. Also, there may be cases requiring action under subparagraph c [in which] no discontinuance action has previously been taken by the VA.

b. **Action Initiated by VA.** Upon receipt of notice of the death of a beneficiary, marriage of a child beneficiary, remarriage of a widow[(er)], or failure of a widow[(er)] under age 60 to have at least one child under age 18 or helpless in [custody], the following action will be taken:

(1) VA Form 21-8046 will be prepared (with an extra copy for the Social Security Administration) to suspend payments, effective date of last payment. [The reason must be specified in "Remarks" on the form, in addition to the required entry of the input reason code.]

(2) Notice will be furnished to the payee, by dictated letter, that payments have been suspended, [the reason therefor] and that further information will be furnished when a final determination has been made [by the Social Security Administration.]

(3) A copy of VA Form 21-8046 and the original or a copy of the evidence upon which the action was based will be sent to the servicing Social Security Administration payment center. If the original evidence is transmitted, a copy will be made for the XC-folder.

(4) Action to discontinue the award or to resume payment will be taken only upon authorization by the Social Security Administration.

[NOTE: A child, over age 18 and attending school is considered a "student beneficiary" by the Social Security Administration and such status does not fulfill the requirement that a widow under age 60 must have at least one child under age 18 or helpless in custody.]

c. **Action Authorized by Social Security Administration.** Request to stop payments will be made to the VA by the Social Security Administration on Form 0A-C656. This form should generally be accompanied by a letter (or draft of the letter) and attachments which Social Security Administration would have directed to the beneficiary had insured status existed. Upon receipt of such request, action will be taken as follows:

(1) VA Form 21-8046 or an amended award, as appropriate, will be [used] to stop payments as requested.

(2) The payee will be notified of the action taken and the reason therefor by dictated letter. The letter furnished by Social Security Administration will be used as a pattern.

(3) One copy of the letter to the payee will be forwarded to the servicing Social Security Administration payment center.

(4) When payments to a widow[(er)] are being terminated because [ ] a child under age 18 or helpless [no longer is in custody] the letter to the payee will include notice [of potential entitlement] at age 60 upon filing a new application with the Social Security Administration.

40.13 [CHILD(REN)'S AWARD–WIDOW(ER)'S PAYMENTS DISCONTINUED]

[a. **Widow(er)'s Payments Discontinued.**] When payments to a widow[(er)] are discontinued because of excessive earnings (as certified by Social Security Administration), payment of the share for each child, as certified by Social Security Administration on Form [SSA-101 or SSA-101C] or 0A-C656, will be authorized to

a parent under VAR 1850(C) or other fiduciary [under a payee number in the 70 series.] Such payments (unless otherwise certified by Social Security Administration) will continue until the entitlement of the child or children is finally terminated. [(But see par. 12.04 re controls for and direct payment to a child upon attainment of majority.)]

[b. **Widow(er)'s Payments Resumed.**] [ ] If the widow[(er)] again becomes entitled, [ ] a separate additional award, without including the children, [may be made] even though [the children] are in [ ] custody. However, both the widow[(er)] and the fiduciary for each child will be notified that if, at any time, a child is no longer in the custody of the widow[(er)], the VA and the Social Security Administration should be informed immediately. Payments to a widow[(er)] under age 60 will be suspended upon receipt of notice by the VA that she[/he] no longer has any children under age 18 or helpless in her[/his] custody, and action taken as provided in paragraph 40.12.

40.14 AMENDED AWARDS

a. **Form 0A-C656.** The Social Security Administration payment center will authorize reinstatement benefits on Form 0A-C656.

b. **VA Form 21-6798d.** Upon receipt of Form 0A-C656 or other determination from Social Security Administration which requires award action, an amended award will be made on VA Form 21-6798d. An original and one copy will be prepared (par. 40.08).

c. **Notice to Payee.** The payee will be informed of the amended award and reason therefor by dictated letter. The letter furnished by Social Security Administration will be used as a pattern.

d. **Notice to Social Security Administration.** One copy of the letter addressed to the payee will be forwarded to the servicing Social Security Administration payment center with the copy of the award.

40.15 DISPOSITION OF CLAIMS FOLDERS AND RELATED MATERIAL

The pattern letter furnished by the Social Security Administration and the initialed copy of the award notice letter will be filed in the XC-folder. The XC-folder with original of the award and award letter and all copies will be attached to the outside of the claims folder and routed to the Finance and Data Processing activity for payment and notice to Social Security Administration as provided in paragraphs 40.10 and 40.14d.

40.16 CORRESPONDENCE

a. **Reply Made by VA.** After approval of an award the VA will answer inquiries relating to:

(1) When the initial payment will be made.

(2) The nonreceipt of a check.

(3) Change of address of the payee.

(4) Change of fiduciary.

The VA reply to any of the foregoing inquiries will include the SSA number. A copy will be sent to the servicing Social Security Administration payment center.

b. **Reply Made by Social Security Administration.** All inquiries pertaining to matters other than those listed in subparagraph a above will be [referred for] answer by the servicing Social Security Administration payment center. This will include inquiries concerning amount of payment and termination of payments as required under the provisions of the Social Security Act.

c. **Referral of Correspondence.** [Any inquiries] pertaining to matters other than those listed in subparagraph a above [will be referred] to the servicing Social Security Administration payment center by dictated letter. [Acknowledgement of receipt of the correspondence by the VA will be made and the claimant informed of the referral.]

40.17 CHILDREN REACHING AGE 18

The VA will notify the Social Security Administration [6] months in advance of the 18th birthday of each child for whom payments are being made under 38 U.S.C. 412(a). For this purpose, the Hines DPC will furnish [Msg code 688, CHILD REACHING AGE 18–SPECIAL ALLOWANCE SEC 412(A), as] notice of a child's approaching 18th birthday. [In each such case the Social Security Administration payment center will be advised by letter of the approaching 18th birthday of a child beneficiary.] The letter will include the SSA number, the name of the child, his[/her] date of birth, the name and address of the person to whom payments are being made for the child.

a. **Action by Social Security Administration.** Upon receipt of the above notice, Social Security Administration will furnish the VA:

(1) A copy of a letter concerning termination of benefits that it would send to the beneficiary if he[/she] were being paid by the Social Security Administration.

(2) An amended certification, if required, for the remaining beneficiaries and a copy of the letter that Social Security Administration would send such beneficiaries if they were being paid by that agency, together with enclosures. The amended certification will include the child over age 18 if development by the Social Security Administration establishes continued entitlement because of school attendance. (See par. 40.02b (3).)

b. **Action by VA.** When Social Security Administration furnishes the appropriate letter, the authorization unit will:

(1) When appropriate, transmit a dictated letter concerning the termination of benefits to the payee for the child who is attaining the age of 18 years. The copy of the letter furnished by Social Security Administration will be used as a pattern.

(2) Take any necessary award action that may be required by the receipt of an amended certification.

(3) Send a copy of any letter written to the payee under subparagraph (1) or (2) above to the servicing Social Security Administration center.

[c. **Requests for Extension of Benefits.** When an inquiry or claim for an extension of benefits by a school child beyond the 22d birthday is received, it will be referred to the appropriate Social Security payment center for their development of entitlement. Based on their certification, the provisions of subparagraphs a and b above will be followed.]

40.18 DEATH OF BENEFICIARY BEFORE PAYMENT

When a beneficiary dies before or after certification but before payment is made and there are remaining eligible survivors, the Social Security Administration will furnish a certification adding the accrued amount payable for such deceased beneficiary to the current certification for the remaining beneficiaries. If there are no remaining eligible survivors, settlement will be made by the General Accounting Office. Inquiries will be transmitted by the Finance activity to the General Accounting Office.

40.19 APPEALS

The usual appeals procedure will be for application only upon receipt of a protest to a determination made by the VA (par. 40.02a). Any inquiries or protests regarding matters for determination by the Social Security Administration (par. 40.02b) will be referred to the servicing payment center of that agency and the claimant informed of such reference.

SUBCHAPTER II. CLAIMS UNDER SECTION 156, PUBLIC LAW 97-377 (REPS)

SECTION A. GENERAL PROVISIONS

40.20 GENERAL

This subchapter provides procedures for processing claims under section 156 of Public Law 97-377. Benefits payable under section 156 are called REPS benefits. REPS stands for Restored Entitlement Program for Survivors. (REPS benefits are also referred to as Quayle benefits.) The term "REPS" was chosen because section 156 restores certain Social Security benefits that were reduced or terminated by the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35.

40.21 APPLICATION FOR REPS BENEFITS

A person claiming REPS benefits must complete VA Form 21-8924, Application for Benefits Under the Provisions of Section 156, Public Law 97-377. The instructions on this application direct the claimant to send it to the nearest VA regional office.

40.22 JURISDICTION

a. **General.** Jurisdiction over REPS claims is split between the various regional offices and a special processing unit (21Q) at the St. Louis regional office. The regional offices will determine basic eligibility and the special processing unit will determine REPS entitlement. The term "basic eligibility" means that the service-connected death requirements of paragraph 40.23a are met. If basic eligibility is established, the St. Louis special processing unit (21Q) will make all determinations affecting payment of REPS benefits.

b. **No XC-Folder.** If there is no XC-folder, the regional office receiving the REPS claim has jurisdiction to determine basic eligibility. If character of discharge is not a bar to payment of title 38 benefits, the regional office shall invite a claim for DIC and/or DEA benefits. (See par. 40.23a(2).)

c. **Active XC-Folder.** If the receiving office does not have the XC-folder and there is an existing XC-folder at another regional office, send the REPS claim to the office having jurisdiction of the XC-folder. That office shall determine whether the claimant has basic eligibility for REPS benefits. If the folder is at an FARC (Federal Archives and Records Center), the regional office that received the application shall recall it to process the REPS claim.

d. **XC-Folder at RPC (Records Processing Center).** If there is an XC-folder at the RPC, send the REPS claim to the St. Louis regional office. In this event, St. Louis has jurisdiction over the issue of basic eligibility as well as REPS entitlement.

e. **Special Allowance Cases–38 U.S.C. 412(a).** The WRO has jurisdiction of any REPS claim that indicates that office previously awarded benefits under 38 U.S.C. 412(a).

f. **Philippine Service.** The Manila regional office or WRO has jurisdiction over REPS claims based on service deemed not active under 38 U.S.C. 107.

40.23 ELIGIBILITY

The REPS benefit is payable to certain spouses and school children who are survivors of members or former members of the Armed Forces who died while on active duty before August 13, 1981, or died from disabilities incurred in or aggravated by active duty before August 13, 1981. However, REPS benefits are not payable based on service in the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration. REPS benefits may be payable if the survivors are entitled to the special allowance under 38 USC412(a) even though the veteran was not fully and currently insured under the Social Security Act at the time of death (Pub. L. 97-322).

a. **Service-Connected Death Requirements**

(1) **Death in Service.** The provisions of subsection (24) of section 101 of title 38, United States Code, apply for death in service. If death occurred in service, line of duty is not a factor and eligibility provided death was before August 13, 1981. (See par. 40.29b(1) when death in service is after August 12, 1981.)

(2) **Death After Separation From Service.** The provisions of subsection (16) of section 101 of title 38, United States Code, apply for service connection. Although the character of the veteran's discharge may be a bar to payment of benefits under title 38, there may be entitlement to REPS benefits provided postservice death was the result of a disability incurred in or aggravated by service before August 13, 1981. However, the disability which resulted in death must have been incurred in line of duty.

[NOTE: Death due to a disability granted "as if" service-connected under 38 U.S.C. 351 or 360 does not establish eligibility to the special allowance under section 156, Pub. L. 97-377. (38 CFR 3.812(c))]

b. **Dependency Requirements**

(1) **Surviving Spouse.** Benefits for a surviving spouse are payable if the spouse is a parent whose youngest child in his or her care is 16 years or older but under 18. A surviving spouse who remarries can establish eligibility if his/her marriage is subsequently terminated.

(2) **School Child.** Benefits for a school child are basically payable to an unmarried child who is 18 years or older but under 22 and who is in full-time attendance in an approved education program at an approved postsecondary school. However, a child who marries after eligibility has been established may again establish eligibility if the marriage is voided or annulled.

SECTION B. REGIONAL OFFICE PROCEDURE

40.24 ESTABLISHMENT OF ISSUE

Cases will be established under existing procedures for control of pending issues with the WEST command. EPC 140 will be assigned if no prior death claim for death benefits (DIC or pension) has been filed. EPC 120 will be assigned for each case if the issue of service connection was not considered with a previous claim for death benefits or if the date of incurrence or aggravation of disability cannot be determined without additional rating action. EPC 290 will be assigned for completion of disallowances or certifications of entitlement if service connection was properly disposed of previously. Benefit type will be shown as REPS. When final action is completed credit will be taken by use of the WCLR (work clear) command.

40.25 REVIEW OF APPLICATIONS FOR COMPLETENESS

a. **Review of Applications.** Review the application for completeness of all required items. A surviving spouse claimant must complete parts I and III of VA Form 21-8924, and a school child must complete all three parts. If a claimant fails to complete any required item(s), identify the item(s) which was not completed by checking it in red. A photocopy will be made of the application and the original application returned to the claimant for completion of the missing item(s). The photocopy will be retained as a control copy until the original is returned. Upon return of the original application, photocopies should be destroyed in accordance with Records Control Schedule VB-1, part I, item 13-052.[200.]

b. **Premature Submission of Application.** Screen any application received more than 9 months in advance of potential REPS payments.

(1) Advise the claimant if the former serviceperson's death is not qualifying; or

(2) Advise the claimant if he or she meets the basic eligibility requirements of section 156 but state that the information regarding the claimant's income and school attendance cannot be accepted more than 3 months prior to the earliest date of entitlement to payment of benefits. Claimants with potential entitlement more than 3 months in the future should be asked to complete a new VA Form 21-8924, parts II and III, and return it to the regional office of jurisdiction. Certify the form was

received within 3 months of entitlement and transmit it to VA regional office St. Louis (par. 40.35) with supporting documents (i.e., the copy of the rating decision, DOD Form 1300).

(3) Completed actions taken under the provisions of this subparagraph qualify as final actions for work measurement purposes. Clear the pending issue file and take the appropriate end product specified in paragraph 40.24 above when you advise the claimant of potential entitlement but request additional information and school attendance information. EPC 290 is authorized for any subsequent eligibility determination and certification of entitlement based upon complete income and school attendance information received in accordance with this subparagraph.]

40.26 AUTHORIZATION DETERMINATION OF BASIC ELIGIBILITY

a. Authorization shall prepare a memorandum decision holding that there is basic eligibility for the REPS benefit if either of the following conditions exist:

(1) The person on whose service the REPS claim is based died in service before August 13, 1981;

(2) The latest RAD [(release from active duty)] date for the person on whose service the REPS claim is based is earlier than August 13, 1981, and the person's death is service connected under rating code "1d."

b. Authorization shall prepare a memorandum decision holding that there is not basic eligibility for the REPS benefits if any of the following conditions exist:

(1) The earliest EOD (entry on duty) date of the person on whose service claim is based is after August 12, 1981;

(2) The special allowance was awarded under 38 U.S.C. 412(a). WRO has jurisdiction of these REPS claims. WRO shall prepare the unfavorable memorandum decision and disallow the REPS claim;

(3) The REPS claim is based on service deemed not active under 38 U.S.C. 107. The WRO or the Manila regional office has jurisdiction over these REPS claims. Send the REPS claim to whichever of these two offices has jurisdiction of the XC-folder for preparation of the unfavorable memorandum decision and disallowance action.

40.27 PREPARATION AND APPROVAL OF AUTHORIZATION DETERMINATIONS

The adjudicator shall prepare a memorandum decision for approval by an authorizer in the following format, as appropriate. [The signed memorandum shall be filed in the XC-folder.]

(Designation of VA office)
(Location of VA office)

(File Name)
(Veteran's Name)

MEMORANDUM

ISSUE: Establishment of service-connected death for entitlement to benefits under section 156, Public Law 97-377.

DECISION: (Succinctly state the decision, citing the applicable provision applied. For example, "The evidence of record shows that the veteran's service connected death on August 1, 1983, was the result of disability incurred in service prior to August 13, 1981. The disability rating of record dated May 15, 1979, established service connection for the disease or injury shown as the cause of death by rating of September 10, 1983.")

_____ Date _____ _____ Date _____

Adjudicator

Authorizer

40.28 LINE-OF-DUTY DETERMINATIONS

A line of duty determination is required when death occurs after active service and character of discharge is a bar to VA noncontractual benefits. If line of duty for cause of death is established, the claim will then be referred to the rating board. (See par. 40.23a(2).)

40.29 CASES FOR RATING BOARD ACTION

The rating board shall determine basic eligibility to the REPS benefit by:

a. Formal death rating if no previous claim for death benefits has been filed, or;

b. Memorandum rating if one of the following applies:

(1) Death occurred in service after August 12, 1981. (If death occurs in service after August 12, 1981, the service medicals must be reviewed to determine if the disease or injury which resulted in or contributed to death had its onset before August 13, 1981.) Basic eligibility for REPS benefits exists if cause of death had its onset before August 13, 1981. These criteria apply to wartime MIA (missing in action) cases in which MIA status is established prior to August 13, 1981, and the casualty report has a date of death after August 12, 1981. In wartime MIA cases, it is presumed that the actual death or disability resulting in death occurred prior to August 13, 1981.

(2) A previous rating was not made because character of discharge was a bar and the Authorization activity has established that the disability was incurred in line of duty.

(3) The RAD [ ] date is after August 12, 1981. The memorandum rating will determine whether the disability which resulted in service-connected death had its onset before August 13, 1981. If it did, basic eligibility for REPS benefits exists.

40.30 PREPARATION OF RATING

The procedures contained in chapters 47 and 49 will be followed in preparing either a formal or memorandum rating. If a memorandum rating is prepared it shall be titled "Eligibility Determination to Establish Service-Connected Death Under the Provisions of Section 156, Public Law 97-377." The conclusion for either a formal or memorandum rating shall be completed as follows:

a. **Eligibility Established.** If basic eligibility is established under section 156, Public Law 97-377, the conclusion of the rating decision shall be annotated with rating code 60, "Service-connected death is established for entitlement to benefits under section 156, Public Law 97-377."

b. **Eligibility Not Established.** If basic eligibility is not established under section 156, the conclusion of the rating decision shall be annotated with rating code 60A, "Service-connected death is not established for entitlement to benefits under section 156, Public Law 97-377."

[NOTE: The rating board shall prepare a copy of a rating decision establishing eligibility to REPS for enclosure with the REPS application.]

40.31 CERTIFICATION OF ELIGIBILITY TO SECTION 156 BENEFIT

The Adjudication Officer or designee (not less than a senior adjudicator) shall certify in part IV of VA Form 21-8924 when the veteran's death meets the basic eligibility requirements of section 156.

40.32 VERIFICATION OF DATA IN QUALIFYING CASES

a. **Review of Application in Qualifying Cases.** If qualifying service-connected death is established, the application must be reviewed for completeness and accuracy and additional information provided as appropriate. The Authorization activity shall review the application to insure that there is no discrepancy between VA data already of record and the data on the application. The veteran's Social Security number must be verified in all cases, since REPS claims are adjudicated based on the veteran's Social Security account. If there is a discrepancy which is resolved by evidence in the claims folder, Authorization shall enter the correct data in the remarks section of the application. DO NOT alter data furnished by the claimant. For example, the applicant said his/her date of birth is July 5, 1956. The applicant's birth certificate in file shows a birth date of July 5, 1965. Authorization should then enter "applicant's correct date of birth is July 5, 1965" in remarks.

b. **Updating BIRLS and Master Record Data.** The Authorization activity shall review BIRLS and any master record data and update as necessary since the St. Louis regional office will have to rely on BIRLS and master record data when processing REPS claims.

[40.33 **Furnishing REPS Outreach Letter and Application**

a. **General.** VA Form 21-8934, Notification of Potential REPS Entitlement, is a letter which furnishes information about REPS and which invites the addressee to file a REPS claim. VA Form 21-8924, Application of Surviving Spouse or Child for REPS Benefits, is the REPS application.

b. **Criteria for Automatic Issuance of REPS Outreach Letter.** The REPS outreach letter (VA Form 21-8934) and REPS application (VA Form 21-8924) are automatically released by the central system if there is a running DIC award and the following criteria are met:

(1) The payee is a DIC spouse whose youngest child or children (in the case of twins) will reach age 16, 2 months from the current processing month, or

(2) The payee is a DIC child whose 18th birthday is 2 months from the current processing month, or

(3) The payee is a DIC spouse with a child whose 18th birthday is 2 months from the current processing month.

c. **REPS Master Record Indicator.** The REPS master record indicator is set by entry of "Y" in the SECTION 156 REPS field on the Target M15 or M24 screens. This field is to be used exclusively by the St. Louis regional office. If the REPS master record indicator is set in a Chapter 35 master record, the St. Louis regional office will receive a VA Form 20-8270a, Education Master Record—Audit Writeout, whenever a transaction 09, 14, 22, 25 or 26 is processed against a child's Chapter 35 record. The St. Louis regional office will set the REPS master record indicator when an individual has both an active Chapter 35 and an active REPS record. St. Louis will remove the REPS indicator as appropriate by use of a CORR transaction. Other stations should neither set nor remove the REPS master record indicator.]

40.34 ADDITIONAL INFORMATION FOR QUALIFYING CASES

a. **Dependency Information To Be Furnished.** The application shall be accompanied by a copy of the M16 dependency screen, or a plain sheet of paper if no M16 screen is available, which must be annotated to show the full name and date of birth of all dependents, including individuals who may have separate awards. The following information will also be furnished when shown in the claims folder:

(1) Identify whether the child is the natural, stepchild, illegitimate, or adopted child of the veteran. If the child is a stepchild, also furnish the date of that child's parent's marriage to the veteran.

(2) Identify any child who has been married, furnishing that information for the particular child.

(3) Identify any parent claimant who has remarried, furnishing that information for the parent.

(4) Identify any individual who may have been denied benefits because dependency was not established; e.g., a surviving spouse claimant who was denied benefits because of a contested claim.

(5) The most recent address of other potential claimants.

b. **School Approval Information.** If the claimant is filing for benefits as a school child, complete item 24 (postsecondary school approval data) of the application. [The certification must show if the school is approved under paragraph 10.08b.]

c. **Power of Attorney.** Enter the claimant's power of attorney, if any, in the remarks sections of the application.

d. **Evidence of Service-Connected Death.** A copy of the rating decision, and a copy of the rating which established service connection for the veteran's death or a copy of the DD Form 1300, Report of Casualty, if death occurred in service, shall be forwarded with the application.

40.35 TRANSMITTAL OF CERTIFIED APPLICATIONS

Applications forwarded to St. Louis must be sent separately from all other mail for that regional office and must be addressed as follows:

Adjudication Division (21Q)
VA Regional Office
Federal Building
1520 Market Street
St. Louis, MO 63103

NOTE: The St. Louis special processing unit in adjudicating REPS claims may have to develop additional evidence or information from claimants. If a claimant submits the requested information to the local regional office, the material is to be forwarded to the St. Louis regional office (21Q) using the address shown above.

40.36 DISALLOWANCE ACTION—ELIGIBILITY UNDER SECTION 156 NOT ESTABLISHED

a. **Notification to Claimant.** If the veteran's death is nonqualifying, the claim shall be disallowed by the regional office of jurisdiction which made the denial. The claimant shall be notified by dictated letter of the specific reason for denial, and existing VA appellate rights will apply for these cases.

b. **Appeals.** The regional office of jurisdiction will be responsible for handling an appeal of a denial of basic eligibility for REPS benefits. The special processing unit at St. Louis (21Q) will handle an appeal of a denial of REPS benefits after a favorable determination of basic eligibility has been made. Appellate procedures contained in chapter 18 will apply.

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40.37 CHANGE IN STATUS—REPS BENEFICIARY

Since there is no capability to interchange REPS and the CP&E master record, it is imperative that each regional office insure that the St. Louis regional office is notified of any change in payment status of a beneficiary. Whenever an award action is processed for a chapter 35 claimant (Child payee), a message will be displayed on the [312,] 406 or 412 Target screen, as applicable, if a REPS record exists. For these cases and for any [O&P] payee 10 (surviving spouse) or a school child DIC record, a QUIP inquiry (see par. 40.41) shall be made to determine the current pay status of any REPS record.

a. **Payment Status Change.** The St. Louis regional office (21Q) is to be advised by priority [VADATS] message of a status change [excluding reenrollment awards, i.e., reduction in], training time, termination of schooling, or marriage of the claimant, if the REPS master record shows a Pay Status of 1. The [VADATS] message should provide sufficient information to enable the St. Louis regional office to take appropriate action. A photocopy of the applicable documentation will be forwarded in these cases and for all cases where the pay status is *other than 1.*

b. **Change of Address.** Whenever a change of address is processed for a beneficiary who also has a REPS record, a print of the change of address screen will be made and mailed to the St. Louis regional office (21Q).

40.38 INQUIRIES FROM REPS BENEFICIARIES

Normally, REPS beneficiaries will contact the local regional office whenever they have a question relating to this benefit program. When such inquiries are made to the local regional office, it is likely that local personnel will be unable to respond directly to the inquiry. However, regional office personnel are to obtain complete information from the beneficiary; then if the inquiry cannot be responded to locally, contact the St. Louis regional office for assistance [at FTS 279-5863, 5864 or 5865.]

SECTION C. ST. LOUIS REGIONAL OFFICE (21Q) PROCEDURE

40.39 PROCESSING INCOMING CERTIFIED REPS APPLICATIONS

All VA Forms 21-8924 and miscellaneous material which are received and addressed to St. Louis regional office (21Q) will be forwarded directly to the special processing unit. This unit will establish and maintain all REPS claims file material.

a. **Review of Applications.** The REPS Authorization activity shall review incoming applications to ascertain if the claim is proper and shall return improper referrals to the regional office having jurisdiction; e.g., receipt of an application in which qualifying service-connected death is not certified.

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b. **Maintenance of Claims Folders.** Only one REPS folder will be established. It will be utilized to maintain the record data for all beneficiaries receiving benefits on the deceased veteran's/wage earner's account. *All* awards and disallowances will be filed down on the left flap, and any other record will be filed on the right flap. (Disposition instructions for these folders are forthcoming.)

c. **Suspense Control of Claims.** Since no automated suspense control for processing these cases is currently available, local control must be maintained and extreme care taken in handling these cases.

40.40 CASES OF POTENTIAL DUAL ELIGIBILITY TO SSA (SOCIAL SECURITY ADMINISTRATION) AND REPS BENEFITS

We should request a REPS claimant to file a claim with SSA if that person is not receiving SSA benefits, but there appears to be possible entitlement under the SSA program. However, the claimant is not required to file a claim with SSA; failure to do so does not preclude processing of the REPS claim.

40.41 ESTABLISHMENT OF RELATIONSHIP

a. **General.** For entitlement to REPS payment, the claimant must be either an unmarried school child who has reached the age of 18 but not 22 or be the surviving spouse of the deceased qualifying person and have in his/her care a child of the deceased person who has reached age 16 but not 18.

(1) **Grandchildren.** The grandchild of the deceased person may be recognized as a child of a deceased person under the REPS program.

(2) **Divorced Spouse.** A former divorced spouse is not eligible under the REPS program since he/she cannot be considered a surviving spouse at death.

b. **Determination of Dependency.** We will use SSA dependency criteria as set forth in SSA POMS (Program Operations Manual System) procedures when determining whether a person qualifies as a dependent under the REPS program. Therefore, as a general rule the VA will accept decisions made by SSA regarding establishment of dependency.

(1) **Prior Disallowance by SSA—Dependency Not Established.** If a person previously denied benefits by SSA for failure to establish relationship, files a REPS claim, we will accept the prior decision made by SSA. Disallowance action shall be taken as follows:

(a) **Notification to Claimant.** Notify the claimant that the REPS claim is denied because the claimant, as a dependent, has not established entitlement to social security benefits which the REPS program replaces. The letter is to include VA appellate rights.

(b) **Notice of Disagreement Filed.** If the claimant notifies the VA that he/she disagrees with the VA decision, it will be accepted as a notice of disagreement. The Authorization activity shall then request SSA to furnish the VA a copy of SSA's determination and all evidence relating to their decision. Also, request the claimant to submit any additional evidence not previously considered by SSA. The Authorization activity shall review the decision made by SSA and all supporting evidence, including any new evidence submitted by the claimant, and make an administrative decision as to whether dependency is established under SSA rules. The conclusion of the decision will follow SSA's finding of nonentitlement unless SSA's finding is patently in error or the claimant furnished new and material evidence which establishes dependency under SSA's rules.

(c) **SSA Decision Affirmed.** If the SSA decision is affirmed, prepare a statement of the case and follow VA appellate procedures.

(d) **SSA Decision Not Affirmed—Dependency Established.** If the VA determines based on SSA rules that dependency is established, the claimant shall be awarded the REPS benefits. Notify SSA of the VA's decision and furnish all facts and circumstances relating to the VA's decision to establish dependency for the REPS benefit.

(2) **SSA POMS References.** Surviving spouse relationship will be adjudicated using procedures contained in POMS Part 03, Retirement and Survivors, Chapter 002, Benefits and Payments. Subchapter 08, Mother's and Father's Benefit (00208.005 through 00208.170); Chapter 003, Evidence, Subchapter 05, Proof of Marital Relationship (00305.001 through 00395.480); and Chapter 013, Support, Dependency, Child-in-Care, Subchapter 10, Child-in-Care (01310.001 through 01310.110). A child's dependency and relationship will be adjudicated using the procedure contained in Chapter 013, Support Dependency, Child-in-Care, Subchapter 05, Child Dependency (01305.001 through 1305.65).

40.42 REQUEST TO SSA FOR MBR (MASTER BENEFICIARY RECORD)

An MBR will be requested from the local SSA District Office for all initial claims and in any instance where it appears a change in social security payments may have an effect on payments to any beneficiary receiving payment under the REPS program. If a prior claim has not been filed with SSA, an earnings record request will have to be submitted to SSA. (See par. 40.43.)

a. **Completion of MBR Request.** The MBR request will be made by submission of a completed Form SSA 4509-TC, RSDI Account Query Card. The SSA 4509-TC is a mark-sensing card and is to be completed as follows:

(1) **Social Security Number.** The deceased veteran's/wage earner's SSN is to be entered in the applicable columns (area, group, serial) under the heading "Social Security Number."

(2) **Identification.** The first five letters of the deceased veteran's/wage earner's last name are to be entered in the columns under the heading "Identification."

(3) **Unit.** Enter V under column 1 (this will identify the VA as the requester); column 2 will be used to show the date of preparation of the request (numerics 1 through 10 will be used to represent days 1 through 10 of the month and alphas a through u will be used to represent days 11 through 31 of a month); column 3 will be used to designate the type of request (enter 1 for the first request; 2 for a followup second request).

(4) **Beneficiary Name.** Enter the veteran's/wage earner's full name.

b. **Control of MBR Request.** A 5-workday control will be maintained for both first and second requests. The case will be referred to the SSA District Office liaison for REPS claims if there is no reply after submission of a second request.

c. **MBR Data—General.** Normally an MBR will be available from SSA, and it should contain the necessary information upon which payments can be made.

d. **MBR Detail Information.** A complete detail of the MBR is provided in SSA's POMS (Program Operations Manual System), Part 8, Systems and Methods, Chapter 005, RSDI Account Records Data, Subchapter 10, Master Beneficiary Reference (00510.001 through 00510.545) and Subchapter 50, MBR Codes (00550.001 through 00550.102).

40.43 EARNINGS RECORD REQUEST

In certain new cases there will not have been prior claims for benefits filed with SSA. Therefore, it may be necessary to submit a request to the SSA District Office for an earnings report when lag wages are known or for an interim request for eligibility status when lag wages must be developed.

NOTE: Lag wages generally are the deceased's wages or earnings for the year of death and the 2 preceding years. These years normally have not yet been posted to the wage earner's record.

a. **Preparation of Form SSA-450, Claims Input Data.** This form will be used to request a complete earnings record from SSA. The form shall have the following items completed with the specified coding:

SSA 450 Coding

Item	Entry
AX (Type of Action)	"SU"
NH (Name)	Wage earner's name (first, middle initial, last) No periods, decimals or numbers Limit of 30 characters
DB (Date of Birth)	Date of birth of wage earner (six digits) with A—(alleged)
SSN (Social Security Number)	Wage earner's SSN (nine digits)
SX (Sex)	M—Male F—Female Circle item with no entry if unknown
DH (Date of Death)	Six digits—date of death Use zeros if month or day are unknown
MS (Military Service)	Military service in period 9/15/40-12/31/67, and military service can be used in the computation dates of service in chronological order and PRV (proven) or ALG (alleged)
LE (Leg Earnings)	Type: WG—wages SE—self-employment ML—military service wages Period: Quarter — Year "00" — "81," "82," "83" (lag) Amount: Service digits (lead zeros if necessary) Limit to maximum for year "81-29,700" "82-32,400" "83-35,700"
UN (Unit)	Unit—up to three digits—start with "VA _____"
DI (Claims Symbol)	Claims symbol BIC block only, use "CI" or "E" do not complete other blocks
AI (Survivor Name)	Survivor's name—use any name the office decides to use.

b. **Preparation of Earnings Record Request Short Form SSA-450C.** This form will be utilized to request only eligibility status of the wage earner to determine whether or not he/she is fully insured. The following items are to be completed.

Item	Entry
AX (Type of Action)	ES
SN (Social Security Number)	Wage earner's SSN
NH (Name)	Wage earner's full name
SX (Sex)	M—Male or F—Female
DB (Date of Birth)	Wage earner's date of birth, enter A for proof code if the DOB is unverified
DH (Date of Death)	Date of death, zero may be entered for day
MS (Military Service)	Military service dates for deceased. USE will be completed as PRV (proven) or ALG (Alleged)
LE (Lag Earnings)	Type—WG Qtr—OD (first) Yr—Current and two priors, enter earliest first Amount—Amount of lag earnings
UN	VA

c. **SSA POMS References.** Instructions pertaining to the earnings records are contained in POMS Part 08, Systems and Methods, Chapter 003, Claims Actions, Subchapter 40, The Earnings Record (00340.001 through 00340.950).

40.44 COMPUTATION OF THE MONTHLY REPS BENEFIT PAYMENT

a. **General.** The REPS monthly benefit is the lesser of 75 percent of the REPS PIA (Primary Insurance Amount) or the claimant's proportionate share of the REPS Family Maximum. A REPS PIA and a REPS Family Maximum must be separately computed for a surviving spouse parent claimant and for a student claimant because the surviving spouse's PIA and Family Maximum are subject to legislative DIC increases while the student's PIA and Family Maximum are subject to legislative increases in chapter 35 benefits.

(1) **Calculation of the REPS PIA and the REPS Family Maximum.** Calculate the REPS PIA and the REPS Family Maximum as follows:

(a) Ascertain the SSA PIA and Family Maximum in effect for August 1981 or, if the wage earner died after August 1981, the SSA PIA and Family Maximum in effect for the month of the wage earner's death. The MBR from SSA will normally provide these data. If SSA has not determined the PIA and Family Maximum request the veteran/wage earner's earnings record from SSA and calculate the SSA PIA and Family Maximum for the applicable date. (See subpar. b below.) [However, use the Social Security recalculated amount if they so certify.]

(b) Increase the SSA PIA and Family Maximum, obtained above, by the percentage amount of any legislative increases occurring [on or] after the effective date of the SSA PIA and Family Maximum (i.e., August 1981 or the month of wage earner's death) and before the first month of entitlement. If the calculation is for a surviving spouse, use DIC legislative increases, if the calculation is for a student, use chapter 35 legislative increases. The amounts obtained are the REPS PIA and the REPS Family Maximum for a surviving spouse or student claimant.

(2) **MSSR (Minimum Sole Survivor Rate).** If the claimant is the sole survivor, the MSSR will be paid if it is greater than the original benefit rate and the wage earner's death was prior to January 1, 1982. (See RS 615.650.) The MSSR paid will be based on the applicable PIA factor code. [The MSSR will be increased by the percentage of any legislative increases which apply to REPS payees.]

(3) **Legislative Increase Running Awards.** Any legislative increase for DIC will apply to REPS surviving spouse payees and any chapter 35 legislative increase will apply to the REPS student payees. The percentage of these statutory increases of VA benefits will be applied to the REPS PIA and the REPS Family Maximum.

(4) **Special Factors Affecting Payment.** Certain offsets and deductions affect the payment of REPS benefits, and are as follows:

(a) A phaseout student will only be entitled to the difference between the gross monthly benefit amount payable under the REPS computation and what Social Security is paying.

(b) The REPS benefit payable is subject to deduction based on wages and self-employment earnings. (See par. 40.47.)

(c) The REPS gross benefit amount is subject to offset if the beneficiary is receiving payment as a mother or father and a pension from the Federal Government, a State Government or any political subdivision thereof. The pension must be based on the individual's own earnings for the offset to apply.

1. The offset does not apply if eligibility for the Government pension was established prior to December 1982, or if eligibility was established prior to July 1983 and the claimant established that one-half of his/her support was provided by the deceased veteran/wage earner.

2. The offset rate for the period January 1978 through June 1983 is 100 percent[;] from July 1983 the offset is $2 in REPS benefits for every $3 of monthly pension payable.

b. **Earnings Record Computation.** SSA will provide earnings records and other pertinent data on either the SSA-1000TR-Claims Data Display Document or the Wire-SSA-1000-Claims Data Display Document. When SSA has not computed the PIA, the PIA and Family Maximum must be manually computed by the VA. The instructions for computing the PIA are contained in the POMS Part 03, Retirement and Survivors, Chapter 006, determination of PIA's and Benefits Amounts, Subchapter 05, Determination of PIA's (00605.001 through 00605.021). The VA will calculate the PIA and Family Maximum using the 1978 New Start Method and the Special Minimum PIA. Should any other calculation formula apply, the case will be referred to the local SSA District Office for assistance in computing the PIA.

c. **Withholding for Other Potential Claimant.** When processing an award action, consideration must be given to the existence of any potential claimant who would appear to have entitlement to either REPS or SSA benefits. If dependency information of record indicates there is a potential claimant, the award calculation must be computed as if the potential claimant was to be awarded benefits. The case must then be diaried until the expiration of the period of entitlement to retroactive payments for the potential claimant. Upon expiration of the control, an amended award can be processed to pay any retroactive amounts due to any claimant(s) for whom benefits were previously withheld. For example, benefits could be withheld in a case where a student claimant files an application for the REPS benefit and the evidence of record shows that there is another potentially eligible child claimant. Likewise, benefits would be withheld in a case in which a child would attain age 18 while the REPS beneficiary is being paid. Payment in these cases would have to be made during the potential period of concurrent payment as if there were actually two school child beneficiaries in receipt of payments. The withholding would be in effect until either the potential claimant files an application or that child's retroactive period of eligibility expires.

d. **Payment of Available Balance When Withholding Is Not Made.** In an additional claimant files for benefits after an award has been made and there has been or prior withholding of benefits, pay the new claimant the difference between what has been paid and the total amount payable from the date of the new claimant's entitlement to DLP [(date last paid)]. The award(s) to the current payee(s) shall be reduced the date of last payment, and the full rate to which the additional claimant is entitled shall be paid from that date. For example, suppose two school child beneficiaries are receiving the REPS benefit and

an additional school child establishes entitlement to the REPS benefit retroactively. The first two school children have been receiving payment at 75 percent of the PIA, but with the additional child the family maximum must be applied. The additional child would be paid the difference between the family maximum and the total amount paid to the other two school children from the additional school child's earliest effective date for payment to DLP. From the DLP each school child would be awarded their appropriate share of the family maximum.

40.45 EFFECTIVE DATE PROVISIONS

REPS benefits can be paid no earlier than January 1, 1983.

a. **Original Claims.** A claimant will have 1 year from the date of publication of final VA regulations for the REPS program to file for benefits and receive payment retroactive to January 1, 1983. If a claim is filed more than 1 year from the date of publication of the regulations but within 11 months following the month in which the claimant first became eligible, benefits shall be paid from the first day of the month in which the claimant first became eligible. If the claim is filed more than 11 months after the month of first eligibility, payment can only be made from the first of the month in which the claim is received.

b. **Reopened Claims.** A claimant will have 1 year from the date of termination or disallowance within which to submit evidence to reopen his/her claim for benefits. If a school child interrupts and later resumes schooling, he/she must reopen the claim within 11 months [following the month in which] schooling is resumed for benefits to be payable from the first of the month of resumption; otherwise, benefits can only be paid from the first of the month in which the claim is received.

[c. **Summer Interruptions.** For a school child beneficiary, each summer will constitute an interruption regardless of whether the student was enrolled during the summer.]

40.46 SCHOOL ATTENDANCE PROVISIONS

a. **General.** REPS benefits are payable when an entitled child is enrolled in a postsecondary program as a full-time student and the school meets the approval requirements of SSA. A determination regarding school approval will only be necessary when the regional office records do not show that the school or training institution has a current VA approval. (See RS 00205.380 for verification development.)

b. **School Approval.** A school is approved if it meets one of the following criteria.

(1) It is approved by a State or national accrediting agency;

(2) It is operated by or supported by the United States, or a State or local government;

(3) Its credits are accepted on transfer by three institutions qualifying above.

c. **Full-Time Attendance.** Certification by an official of a college or university that attendance is full time is sufficient to establish full-time attendance. For below college level programs, the student must be full time by the school's standards. Normally, 20 hours of attendance per week will establish full-time attendance. (See RS 00205.200ff for discussion of full-time attendance.)

d. **Certification of Attendance.** Certification of attendance by a school official is required at the beginning and end of each school year. Certifications will normally be sent to the student but must be returned by the school. A preaddressed returned envelope should be provided.

(1) **Certification at Beginning of School Year.** Benefits may be awarded prior to the beginning date of school attendance based on the statement of the student shown on the application. (See subpar. e below for payment during a period of nonattendance.) A diary must be established to provide for release of a certification no later than 30 days after the scheduled commencement date of attendance. However, the adjudicator shall request an immediate certification of attendance, VA Form 21-8926, Certificate of School Attendance Under Section 156, P.L.97-377, for any case where there is some question regarding the claimant's actual attendance which would affect entitlement to payment of benefits.

(a) **Certification—No Active Chapter 35 Benefit Payment.** The adjudicator shall send VA Form 21-8926 to the REPS beneficiary no later than 30 days after commencement of scheduled attendance. The beneficiary will be notified that the certification must be completed by a school official and returned to the VA within 30 days or further payment of his/her REPS benefits will be discontinued. If, after 30 days, certification has not been received, payments are to be terminated effective the month following the month classes were scheduled to begin. However, if the student has not resumed attendance after a period of nonattendance, not to exceed 4 calendar months, payments are to be terminated at the end of the nonattendance period. (See subpar. e below.) The beneficiary will be provided proper notification of the termination of payments.

(b) **Certification—Active Chapter 35 Benefit Payment.** The adjudicator may review the Target chapter 35 master record certification data to confirm full-time attendance. If the chapter 35 data substantiate that the REPS beneficiary is in full-time attendance, no further certification is necessary. It should be noted that in some cases half-time or three-quarter time under chapter 35 may constitute full-time attendance under the REPS program. However, if there is any indication that the REPS beneficiary is not in full-time attendance; e.g., and advance payment is indicated and the bar has not been released, the adjudicator shall suspend the REPS payment and send VA Form 21-8926 to the beneficiary. The beneficiary will be notified of the suspension of payments and that the certification must be completed by a school official and returned to the VA within 30 days. If, after 30 days, the certification has not been received, the adjudicator shall take appropriate action to terminate payments as specified in subparagraph (a) above.

(2) **Certification at End of School Year.** [The adjudicator shall establish a diary control for each school child to provide for release of a certification of attendance, VA Form 21-8938, Student Beneficiary Report. The system control can be accomplished by entering the enrollment period and checking status for certification "2" on VA Form 21-8927. The system will send a VA Form 21-8938 to the student beneficiary at EOM March. Should the system control be inadequate, a local control must be maintained.

(a) **Receipt of Certification.** Upon return of the properly completed certification, the suspense control can be released by changing the status code to 4 on the Q01 screen, if no award action is required. When award action is required for current or future adjustment, use status code 1 or 2, as appropriate.

(b) **Nonreceipt of Certification.** At EOM May processing all cases with status code 3, certification released, will be suspended by the system. A system generated letter with another VA Form 21-8938 will be sent to each student whose award is suspended, and a listing of these cases will be produced for the St. Louis regional office. After 60 days a second listing will be produced for those cases still in suspense. The adjudicator shall review those cases and take any necessary action.]

e. **Payment During Period of Nonattendance.** Payment may be made under the following conditions:

(1) The period of nonattendance is 4 full calendar months or less, and

(2) The student establishes that he or she intends to be in full-time attendance at a postsecondary school immediately following the period of nonattendance, or is in attendance at a postsecondary school immediately following the period of nonattendance.

40.47 ANNUAL WAGE AND EARNINGS TEST

a. **General.** REPS cases are subject to an annual wage/earnings test which sets a limit on the annual amount of earnings [or wages. The Authorization activity must reduce or terminate payments, if a beneficiary reports excessive wages. The REPS benefit is reduced $1 for every $2 of wages over the annual limit].

b. **Annual Report of Wages and Earnings.** The Authorization activity will establish a control for the year in which payments must be reduced because of excessive earnings or when the beneficiary provided substantial services in self-employment. VA Form 21-8941, Annual Report of Earnings, will be sent to each of these beneficiaries on or about March 1 of the year following the year in which payments were reduced. The beneficiary will be notified that the report must be returned by April 15th.

NOTE: In any case in which earnings data are being reported to SSA and that data can be obtained from SSA; i.e., phaseout student cases, spouse cases in which SSA has made payments during the year, the SSA earnings data shall be used in lieu of having the beneficiary file VA Form 21-8941.

(1) [**Monthly Earnings Test.** A monthly test can be used for an initial year of entitlement or for any year in which entitlement ends. An initial year of entitlement would only apply when the claimant was not entitled to Social Security benefits; i.e., the veteran was not in receipt of Social Security at death and the child was over age 18. The REPS benefit is not payable for any month in which the beneficiary earns more than the monthly limit or engages in substantial services in self-employment.]

(2) **Substantial Services in Self-Employment.** [During the "Grace Year" (the last year for payment of the benefit)], when more than 45 hours are devoted to self-employment in a month, services are considered substantial. When less than 15 hours are devoted to self-employment in a month, services are not considered substantial. Generally, when between 15 and 45 hours are devoted to self-employment, to be considered substantial, the beneficiary must be involved in the management of a sizable business or a highly skilled occupation.

(3) **Foreign Work.** When the beneficiary reports foreign earnings the procedure in POMS RS 2605 will apply.

40.48 OVERPAYMENT CASES

The St. Louis regional office shall be responsible for establishment of any REPS accounts receivable and for any waiver actions which are the results of any overpayment created because of any erroneous payment of the REPS benefit.

40.49 PREPARATION OF REPS AWARDS

a. **Award Procedure.** VA Form 21-8927, Section 156 Award, will be used for all award actions relating to REPS payments.

(1) **Manner of Preparation.** The award form will be filled out in legible handwriting or by printing. Ink, ballpoint pen or indelible pencil may be used.

(2) **Number of Copies.** All initial and supplemental awards will normally be prepared in original only, except if a copy is required because the claimant has a fiduciary payee.

(3) **Completion of Items.** The Authorization activity will be responsible for the completion of all required items except for those items contained in the FINANCE section at the bottom of the form.

(4) **Signatures.** Awards will be prepared by an adjudicator for approval by an authorizer. The signatures will be entered in the spaces provided.

(5) **Correction of Errors.** Correction of errors on the award form may be made as necessary except for errors involving the rates payable and/or effective dates. Correction of these excepted items is not permitted; a new award will be prepared and the incorrect award will be destroyed. Correction of any other items may be made by the adjudicator or authorizer by drawing single lines through the erroneous entries, inserting the correct entries and initialing the correction.

(6) **Correction of Errors After Transmittal to the Data Processing Center.** If the error is in a rate and/or effective date, the incorrect award in the claims folder will be appropriately marked to identify the error(s). A corrected award will then be prepared. Statistical data may be corrected on the award form with referral to the Input activity for correction of the master record data.

b. **Completion of Award Form.** The following data items are to be completed for each REPS award.

(1) **Transaction Code.** An O will be entered for an original award, and S will be entered for all supplemental awards.

(2) **[Social Security Number of Veteran.]** The veteran's social security number [ ] will be entered. [ ]

(3) **[Payee Number.** The appropriate payee number will be entered to identify the person entitled. Payee number 10 will be assigned for surviving spouse cases and payee numbers 11-19 will be assigned for school child cases.

(4)] Payee Stub. The claimant's first and middle initial and first five letters of the last name will be entered.

[(5) Power of Attorney.] The claimant's power of attorney code, if any, will be entered.

[(6) Other P/A Code. The power of attorney code fourth XC-folder, if different, will be entered.

(7)] Copy to VSO. The location of the guardianship file, if any, will be entered.

[(8)] RO Number C-File Location. The station where the XC-file is located will be entered.

[(9) Type of Other Record.] When the claimant is in receipt of either DIC or chapter 35 benefits, the appropriate item will be marked.

[(10) Name and Address. Enter the beneficiary's name and address, and the address line on which the beneficiary's name is entered. If the beneficiary's name cannot be matched against the stub name, enter a zero.]

[(11)] Pay Status [Code]. The pay status [code] will be completed as follows:

Code	Pay Status
1	Active payment status
2	Suspend status
3	Terminate payment, other than death
4	Terminate payment, death of payee
5	Deletion of record (used only when a new record for the payee must be created)

[(12)] Date of Claim [or Issue]

(a) Original Awards. Enter the earliest date of receipt as recorded on the REPS claim constituting the basis for the award being prepared.

(b) Supplemental Award. On awards resulting from claims previously disallowed or terminated, enter the date of receipt as recorded on the reopened REPS claim constituting the basis for the award being made.

[ ]

NOTE: Items [(13)] Claimant, [(14)] Veteran and [(15)] Surviving Spouse are only required items when preparing an original award.

[(13)] Claimant: DOB/SSN/CNBR. Enter the claimant's date of birth, Social Security number and the VA file number.

[(14)] Veteran: Stub name/DOD/BR. Enter the veteran's stub name, date of death and branch of service.

[(15)] Surviving Spouse: Qualifying Child DOB/Name. On payee 10 awards enter the date of birth for the child in care and that child's name. Should there be more than one child in care who has reached age 16 but not age 18, enter the data for the youngest child.

[(16) Primary Insurance Amount.] Enter the REPS primary insurance amount.

[(17) **Family Maximum Amount.**] Enter the REPS family maximum amount.

[(18)] **SSA Base [Rate].** Enter the social security monthly pay amount which is used as the base rate for REPS payments. [This amount should support the monthly rate for the current award line.

(19) **Award Data**

(a)] **RC.** Enter the change reason code (app. A) indicating the reason for the change in rate, on each award line.

[(b)] **Monthly Rate.** Enter the monthly rate authorized on each award line. A termination or no-rate period will be entered as "NONE" effective as of the first month of nonentitlement.

[(c)] **Effective Date.** Enter the effective date (month, year) as determined under the REPS program procedures.

(20) **Prior Pay Data.** The monthly rate(s) and effecitve date(s) for all prior periods of pay will be entered on all retroactive awards. If no previous payments are made, an entry of "NONE" will be made.

(21) **Pay Thru Date.** The month and year through which continuing payments are to be made will be entered.

[(22) **Current Enrollment Period.** Enter the beginning and ending dates for the current enrollment period for a student beneficiary.

(23) **Status for Certification.** Check the appropriate box for school attendance certification control as follows:

Code	Control Status
1	No control
2	Est control
4	Certification received]

c. **Finance Pay Data.** The Finance activity will compute the monthly pay amount, any retroactive amount payable, the amount of any proceeds due, and any accounts receivable amount. The signatures of the authorized fiscal official and the person who processes the award data will be entered.

d. **Award Letters.** A dictated letter or appropriate REPS pattern letter will be furnished every claimant when an award action is taken. The claimant shall be furnished the reason for the award action and notified of the creation of any overpayment. A notice of VA appellate rights will be [provided.]

40.50 PREPARATION OF REPS DISALLOWANCES

If a claim is disallowed, the disallowance will be prepared by using VA Form 21-8933, Section 156 Disallowance. It must be prepared by an adjudicator and approved by an authorizer. The form is to be filed in the REPS claims folder.

a. **Completion of Disallowance Forms.** The following data items are to be completed for each REPS disallowance.

(1) **Type Claim.** Indicate whether the claimant was filing a claim as a surviving spouse or school child.

(2) **Veteran's/Wage Earner's SSN.** Enter the Social Security number of the wage earner.

(3) **Veteran's/Wage Earner's Name.** Enter the full name of the wage earner.

(4) **Date of Claim.** Enter the earliest date of receipt of the REPS claim to be denied.

(5) **Location of XC-File.** Enter the location of the XC-file.

(6) **XC-File Number.** Enter the XC-file number.

(7) **Claimant's Name.** Enter the claimant's full name.

(8) **Reasons for Disallowance.** Select the applicable reason code for the denial of the claim. If none of the specified disallowance reasons apply then use reason code 29, Other, and specify the reason for denial.

b. **Disallowance Letter.** The claimant shall be notified of the denial of the claim and the specific reason for denial. An appropriate pattern letter, as shown on the disallowance form, may be used; otherwise, send a dictated letter. Send copies of the disallowance letter to the claimant's power of attorney, if any.

SECTION D. REPS SCREEN (Q01) DISPLAY [ ]

40.51 REPS MASTER RECORD INQUIRY

REPS payment data are available for review on the Q01 (Section 156 Award Screen) screen. Inquiry capability is available in all regional offices.

a. **Ready Screen Requirements.** To request display of screen Q01 enter the command QUIP and password. The file number (veteran's Social Security number) and beneficiary's payee number must be entered to identify the exact record to be displayed. Cases in which REPS payment was made in July 1983 or August 1983 had the payee number automatically assigned. If the payments were to chapter 35 beneficiaries, 30 was subtracted from the chapter 35 payee number to determine the REPS payee number; i.e., if the chapter 35 payee number was 42, payee 12 was assigned for the REPS record. If payments were to a DIC child, the existing payee number was assigned.

(1) If a REPS master record is found for the file number and payee number entered, the record will be displayed on the Q01 screen.

(2) If a REPS master record is not located, the message "No Record Found—Start New Command With PA2 Key" will be displayed at the bottom of the screen.

(3) If the REPS master record files are unavailable because the files are being updated, the message "MSG-1D Currently Invalidated. (Insubordinate Host)" will be displayed at the bottom of the screen.

b. **Screen Q01 Display.** When a matching REPS master record is found, the Q01 screen will be displayed as follows:

(1) The current date will be displayed on the first line as MM-DD-YY.

(2) The file number and payee number will be displayed next to FILE NUMBER as NNN-NN-NNNN-NN.

(3) The claimant's initials and first five characters of surname will be displayed next to the NAME filed as xbxbxxxxx.

(4) The name line number will be displayed as stored next to the field NAME LINE NO.

(5) The station number of the office having jurisdiction of the claims folder will be displayed next to the field STATION NUMBER in NN format.

(6) If the master record contains an indicator that an active compensation and pension record exists, an X will be displayed next to the field ACTIVE C&P.

(7) If the master record contains an indicator that an active chapter 35 record exists, an X will be displayed next to the field ACTIVE CH35.

(8) A code 1, 2, 3, 4, or 5 will be displayed next to the field PAY STATUS.

Code	Record Status
1	Active record
2	Record in suspense
3	Record terminated
4	Record terminated, death
5	Record to be purged

(9) The payee's mailing address, consisting of six lines of 20 characters each and a seventh line containing only the ZIP Code, will be displayed under the field PAYEE NAME AND ADDRESS.

(10) Under the PAYMENT HISTORY field, the three most recent payments will be reflected, with the first line showing the most current. Under the field TYPE, one of four legends will be displayed. The amount of the payment will be displayed under the AMOUNT field. The date on which the payment run was made will be displayed under the DATE field.

Type	Payment
RECUR	Recurring benefit payment only
RETRO	Retroactive payment only
PRCDS	Proceeds paid only
MIX	Combination of recurring, retroactive and/or proceeds payments

(11) The claimant's date of birth will be displayed as MM-DD-YY on the CLAIMANT line under the field DATE OF BIRTH.

(12) The claimant's Social Security number will be displayed on the CLAIMANT line under the field SOC SEC NBR.

(13) The claimant's VA file number will be displayed in straight sequence on the CLAIMANT line under the field VA FILE NBR.

(14) The month through which the claimant was last paid will be displayed in MM/YY format on the CLAIMANT line under the field DATE LAST PAID.

(15) The veteran's stud name will be displayed in xbxbxxxx or xbbbxxxxx format on the VETERAN line under the field STUB NAME.

(16) The veteran's date of death will be displayed in MM-DD-YY format on the VETERAN line, under the field DATE OF DEATH.

(17) The veteran's branch of service code will be displayed on the VETERAN line under the field BRANCH OF SERVICE. Descriptions of these codes are contained in the paragraph pertaining to screen entry requirements.

(18) The date of birth of the child who qualifies the surviving spouse for benefits is displayed as MM-DD-YY next to the field QUALIFYING CHILD DATE OF BIRTH (SURV SPOUSE ONLY).

(19) The primary insurance amount will be displayed as NNNNNN.NN nex' to the field PRIMARY INSURANCE AMOUNT.

(20) The family maximum benefits amount will be displayed as NNN.NN next to the field FAMILY MAXIMUM.

(21) [a] retroactive amount to be paid [the current] month will be displayed as NNNN.NN next to [either of] the RETROACTIVE AMOUNT [fields].

[(22)] The Social Security (August 1981 or later) rate upon which payments are based will be displayed as NNNN.NN next to the field SSA-08-81-BASE.

[(23)] The recurring amount to be paid for the current month will display as NNNN.NN next to the field MONTHLY [RATE (RECURRING). If the rate is changed for the current month, the new monthly rate will be shown in the CHANGE MONTHLY RATE field.

(24)] The month through which recurring payments should continue at the recurring amount will be displayed as MM/YY next to the field [current] PAY THROUGH DATE. [If the Pay through date is changed for the current month, the new pay through date will be shown in the CHANGE PAY THROUGH DATE field.

(25)] The amount of any proceeds due to be included with this month's payment will be displayed as NNNNN.NN next to the field [TOTAL] PROCEEDS.

[(26)] The current balance of an accounts receivable will be displayed as NNNNN.NN next to the field [TOTAL ACCOUNTS RECEIVABLE BALANCE.

(27)] The NEXT SCREEN field will be blank.

[(28)] The last two lines of the screen are used to display information and/or error messages, if any.

[ ]

REPS CHANGE REASON CODES

00	Original
11	Income Change or Income Excessive
13	No Children 16-18 Established
14	Relationship Not Established
15	Person Entitled Married
16	Failed To Furnish Evidence
22	Death of Claimant
23	Child Enters School
24	Child Reaches Age 18, Gets Married or Dies
25	School Child Reaches Age 22 or Terminates Full-Time School Attendance
26	Dependent Added
27	Less Than Full-Time Attendance
28	Redistribution of Family Benefit
29	Continue Current Rate
37	COLA
43	Child in Another Award Enters School
44	Child in Another Award Reaches Age 18, Gets Married or Dies
45	Child in Another Award Reaches Age 22, Terminates School Attendance, Gets Married or Dies
47	Child in Another Award in Les Than Full-Time Attendance
[60	Respond Award]
70	SS Begins
71	SS Ends
72	Reduction to 50% SS Paid (Eff. 9/1/83)
73	Reduction to 25% SS Paid (Eff. 9/1/84)
74	SS Payments Phased Out
75	Earlier Effective Date
76	Misc. SS Change
80	Program Not Approved

CHAPTER 41. AWARDS INVOLVING OTHER DEPARTMENTS OR AGENCIES

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CHAPTER 41. AWARDS INVOLVING OTHER DEPARTMENTS OR AGENCIES

See Also

Chapter 13—Certificates for Special Purposes and Information Requests to or From Other Federal and State Agencies.

Chapter 29—Subchapter IV—Federal Employees' Compensation [Act].

Chapter 29—Subchapter V—Retired Pay Cases.

Chapter 29—Subchapter VI—Waiver or Disability Benefits During Reserve Training Duty.

Chapter 40—Special Allowance—(38 U.S.C. 412(a)).

SUBCHAPTER I. [OFFICE OF PERSONNEL MANAGEMENT]—AWARDS BARRED BY RECEIPT OF FEDERAL EMPLOYEES' GROUP LIFE INSURANCE

41.01 SCOPE

This subchapter is applicable only to cases in which the deceased person served as a commissioned officer of the Coast and Geodetic Survey (NOAA—National Oceanic and Atmospheric Administration, formerly ESSA—Environmental Science Services Administration) or the Public Health Service after August 16, 1954, and prior to January 1, 1957, and whose death occurred on or after May 1, 1957.

a. If death occurred prior to May 1, 1957, death compensation or DIC may be paid to dependents of these deceased officers, without regard to Federal employees' group life insurance coverage.

b. If death occurred on or after May 1, 1957, death compensation or DIC may not be paid if Federal employees' group life insurance is payable to *any* person (VAR 1005(D)).

41.02 OBTAINING INFORMATION

When a claim for death compensation or DIC is based on a death which occurred on or after May 1, 1957, and the deceased person was a commissioned officer of the Coast and Geodetic Survey (NOAA, ESSA), or the Public Health Service after August 16, 1954, and prior to January 1, 1957, a letter will be addressed to the [Compensation Group, Office of Personnel Management], Washington, D.C. 20415, stating that:

a. Claim has been filed with the VA;

b. The deceased veteran [performed] active service as a commissioned officer of the Coast and Geodetic Survey (NOAA, ESSA) or the Public Health Service, and;

c. Requesting a statement as to whether Federal employees' group life insurance has been paid or is payable to any person.

41.03 SIMULTANEOUS DEVELOPMENT

To avoid piecemeal development and to keep the claimant informed of possible delays (par. 4.03), simultaneously with the request to the [Office of Personnel Management], the claimant should be notified of the action taken. In addition, if there is evidence to be submitted by the claimant which could be supplied without expense or undue expenditure of time and effort, a request for such evidence should be included. Otherwise, unless it is readily apparent that Federal employees' group life insurance would not be payable and, therefore, not a bar, such requests for evidence will be deferred. This does not in any way, however, preclude such simultaneous development as may be necessary to obtain any records or evidence from other sources, e.g., VA Form [60]-3101 requests.

41.04 ACTION UPON REPLY FROM [THE OFFICE OF PERSONNEL MANAGEMENT]

a. If the reply states that such insurance has been paid or is payable either to the claimant or to any other person or persons, the claim will be disallowed under disallowance code 30. The reason will be stated as: "Federal Employees' Group Life Insurance payable, VAR 1005(D)."

b. If the reply is in the negative and, following completion of development, entitlement or nonentitlement is otherwise established, the appropriate award or disallowance action will be taken under the standard procedures.

[ ]

SUBCHAPTER [II.] SERVICE DEPARTMENTS—ALLOWANCE, ALLOTMENT, OR SERVICE PAY—38 U.S.C. 3010(j)

41.11 SCOPE

a. **General.** The provisions of VA Regulation 1400(C)(1) (38 U.S.C. 3010(j)) are for application in all death-in-service cases.

(1) When a claim for service-connected death benefits is filed within 1 year after the date of death of a [serviceperson] (or the date on which a report of actual death or a finding of presumptive death has been made by the Secretary of the service department concerned), VA payments may be affected by payments made to the claimant by the service department.

(2) Payment of death compensation or DIC to any dependent is precluded for any period for which such dependent has received or is entitled to receive an allowance, allotment, or service pay of the deceased (excluding the 6 months' death gratuity). (See also par. 32.01b re furnishing applications.)

b. **More Than One Report or Finding of Death**

(1) If the XC-folder contains more than one report of actual death or finding of presumed death, the report or finding which was first made by the service department will be used for the purpose of determining whether the original claim was filed within the prescribed period of 1 year.

(2) Retroactive death compensation or DIC will not be authorized under the provisions of 38 U.S.C. 3010(j), unless the dependent filed claim within 1 year from the earliest date the report or finding of death was made by the service department as shown by the service report.

[ ]

41.12 AWARD ACTION

a. **Initial Award—Payment Data Not Furnished.** Adjudication of a claim for death compensation or DIC will not be delayed solely because of the fact that information from the service department concerning the payment of an allowance, allotment, or service pay of the deceased to his or her dependents is not of record. (But see par. 32.01b.) When claim is received within 1 year of the date of report or finding, initial award action will be taken, if otherwise in order, to authorize payments subject to possible adjustment, as follows:

(1) **Date of Death** will be entered by the adjudicator, in the [space] provided, as the date of reported or presumptive death.

(2) **Effective Date** will be shown in case of:

(a) **Reports of Actual Death**--as of the day following the date of reported death or, if the deceased was held to be in a missing status subsequent to the date of reported death, as of the day following [the date of the report of missing status.]

(b) **Findings of Presumptive Death**—as of the day following the date [of the report.]

(3) **Remarks** will be: [ ]

"Report (Finding) of death made _____(date)_____
Subject to possible adjustment to an earlier
commencing date. (38 U.S.C. 3010(j).)"

(4) **Development and Notice to Claimant.** A 30-day control will be established for receipt of DD Form 1515, Pay and Allotment Information—Deceased Member, at the expiration of which the necessary payment information will be requested by VA Form [60]-3101 as provided in chapter 6. The regular award letter will be used without any reference to the possibility of a future adjustment of the commencing date.

(5) **Subsequent Adjustment on Receipt of Payment Information**

(a) If, under the provisions of paragraph 41.13, an adjustment in the commencing date of an award under this subparagraph is not required upon receipt of the information from the service department, the VA Form [60]-3101 will be noted "NAN," dated and initialed by an adjudicator.

(b) If an adjustment is necessary, it will be accomplished by an amended award which will include the appropriate statement for "Remarks" as set forth in the paragraph 41.13.

b. **Initial Award—Payment Data Furnished.** When, as to a particular claimant, the DD Form 1300, Report of Casualty, or other report or finding of actual death or DD Form 1515 contains the necessary information as to [the beneficiary's] receipt of an allowance, allotment, or service pay of the deceased, VA Form [60]-3101 action will not be necessary. Award action will be taken and the commencing date determined and "Remarks" entered as provided in paragraph 41.13.

c. **Claim Received More Than 1 Year After Initial Report or Finding.** When the claim is filed more than 1 year after the date the report or finding was made, the commencing date will be the date the claim was filed, if otherwise in order. Service department payment information will not be required except as to basic pay data to determine a [surviving spouse's] entitlement to DIC.

41.13 COMMENCING DATES AND REMARKS

Commencing dates will be determined and initial or amended awards prepared with the appropriate remarks as provided in this paragraph. As used in this paragraph, the term "payments from the service department" means allowance, allotment or service pay of the deceased which the claimant received, or is entitled to receive.

a. **Reports of Actual Death.** When claim is received within 1 year after the date of a report of actual death was made, the following will apply:

	Commencing Date	"Remarks" To Be Entered on Award
(1) No payments from service department for any period on or after first day of month of death.	First day of month of death.	Report of death made (date). Payee did not receive, and is not entitled to receive, any allowance, allotment, or service pay of the deceased. (38 U.S.C. 3010(j).)
(2) Payments from service department for a period on or after the date of actual death.	The day following the date of actual death.	Report of death made (date). Payee received (entitled to receive) allowance (allotment) (service pay) of the deceased through (date). (38 U.S.C. 3010(j).)
(3) When deceased was carried in a *missing status* and payments from service department were for a period subsequent to the date of death. [ ]	Day following final date of period covered by service department payments.	Report of death made (date). Payee received (entitled to receive) allowance (allotment) (service pay) of deceased through (date). (38 U.S.C. 3010(j).)

b. **Finding of Presumptive Death Corrected by Report of Actual Death.** When an award has been made on a claim filed *within 1 year after the finding of presumptive death* was made, upon receipt of a report of actual death and necessary payment information, adjustment in the commencing date will be governed by the following:

	Commencing Date	"Remarks To Be Entered on Award
(1) No payments from service department for any period on or after the first day of the month of death.	First day of month of actual death.	Finding of presumptive death made (date) corrected by report of actual death.
(2) Payments from service department for a period subsequent to date of death and prior to the date the finding of presumptive death was made. [ ]	Day following the final date of period covered by service department payments.	Finding of presumptive death made (date) corrected by report of actual death. Payee received (entitled to receive) allowance (allotment) (service pay) of the deceased through (date). (38 U.S.C. 3010(j).)

41.14 CORRECTIONS OF REPORTS OF ACTUAL DEATH

a. **Correction of Date of Death in a Prior Award.** When a report of actual death is received which corrects the date of death shown in the previous report, the award will not be amended solely for the purpose of correcting the date of death when an adjustment in commencing date is not thereby required.

(1) The incorrect date on the award brief face will be lined out and the correct date entered, and initialed by the authorizer.

(2) [Correction to the master record will be made via the VDT System or TR 02M via magnetic diskette.]

b. **Amended Award Required.** When the award must be amended to adjust the commencing date, the "Remarks" to be entered will be as provided in paragraph 41.13, except that the entry will be preceded by the notation: "Report of actual death made (date) corrected by subsequent report of actual death."

41.15 AWARDS TO OTHER BENEFICIARIES

a. **Apportionments.** An award to, for, or on account of a child or children of an apportioned share of death compensation or DIC will not be authorized for any period during which the payment of such benefit to the surviving spouse is barred by reason of the provisions of 38 U.S.C. 3010(j).

b. **Children (No Surviving Spouse) or Parents.** When payment of death compensation or DIC to only one child or parent is barred during any period by reason of the provisions of 38 U.S.C. 3010(j), payments during such period will be authorized for the other child(ren) or parent if otherwise in order, but only at the rate which would be payable if all children or both parents were receiving payments.

41.16 SERVICE DEPARTMENT PAYMENT TO ESTATES

a. **Determination of Service Pay Paid to Claimant.** In those cases in which the information furnished by the service department shows that service pay of the deceased was paid to fiduciary (executor, administrator, or other representative) of the veteran's estate, and a determination is necessary as to whether any claimant for death compensation or DIC may be considered to have received or to be entitled to receive service pay of the deceased, the determination will be predicated on a statement from the fiduciary or the court of jurisdiction.

(1) The claimant will be requested to submit a statement from one of these sources setting forth whether any portion of the veteran's estate has been or will be paid to the claimant.

(2) This procedure will be observed in cases in which the claimant and fiduciary of the estate are separate individuals, as well as instances in which the claimant and fiduciary are identical.

(3) If the claimant received the service pay of the deceased in his or her official capacity as fiduciary of the estate, it will be necessary to ascertain whether he or she received any amount from the estate as distributee.

b. **Time Limit.** The request for this information will be considered a request for evidence and will be subject to the 1-year time limit for the submission of evidence in connection with a pending claim.

SUBCHAPTER [III.] SERVICE DEPARTMENTS THE SURVIVOR BENEFIT PLAN

41.17 SCOPE

a. **General.** Effective September 21, 1972, the SBP (Survivor Benefit Plan) was established under Public Law 92-425 for retired service personnel and commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration.

b. **SBP Annuity.** Eligible persons can designate all or a portion of retired pay as a basis for survivors' annuity, payable to a surviving spouse, children or persons having an insurable interest in the retiree. The designated beneficiary will receive 55 percent of the base amount selected.

c. SBP Minimum Income Annuity Plan. The SBP alternatively provided for a guaranteed minimum income for the limited class of eligible surviving spouses of military retirees who did not participate in the Plan *and* who died *prior to September 21, 1973.* For eligibility, the surviving spouse must not be remarried, must be eligible for VA death pension, and must have income *for VA purposes,* excluding any SBP annuity, of less than the MIW-SPB annuity limitation. (See app. B.) This plan is identified as an annuity paid to Minimum Income Widow/ers and referred to as the MIW-SBP.

d. SBP Relationship to VA Benefits

(1) Pension Entitlement. *Any* payments under MIW-SBP will be considered "Retirement or Annuity" income for VA pension purposes (VAR 1261(A)(14)).

(2) DIC Entitlement. Payments of SBP survivor's annuity to a survivng spouse are subject to reduction or discontinuance due to entitlement to dependency and indemnity compensation by that person. Concurrent payment of SBP and DIC to children and parents is not prohibited.

(3) Dual Entitlement. The VA has no regulation preventing a surviving spouse from receiving DIC based on the death of one veteran (A) while also receiving SBP based on the death of another veteran (B). The service department does have such a prohibition which will be honored by the VA if the service department submits a request for DIC offset for veteran (A) signed by the surviving spouse. (See par. 41.19b(2).)

41.18 DEATH PENSION CASES—SBP MINIMUM INCOME PLAN

a. Referrals by Service Department for Eligibility Determination

(1) If a surviving spouse meets eligibility requirements for the SBP minimum income plan (par. 41.17c.) and has applied to the Defense Department for such benefits, the service department will forward an original and one copy of DD Form 1895, Request for Veterans Administration Pension and Annual Income Information, together with a copy of DD Form 1885, Survivor Benefit Plan, Minimum Income Claim.

(2) If RSFPP (Retired Servicemens' Family Protection Plan) benefits are payable, the "Eligibility Determination" portion of DD Form 1895 will have been partially completed by the service department, showing subtraction of the RSFPP annuity (which is not counted in VA income computations for Section 306 or Old Law cases—VAR 1261(A)(14)) from the basic income limitation, and establishing the actual income limit which can be supplemented by the MIW-SBP annuity.

(3) In Improved Pension cases, RSFPP benefits are countable as income for VA purposes. RSFPP annuities will be [entered] as type M retirement (type 0 if more than one retirement benefit is involved) and special law code 06 will be entered.

b. Eligibility Determination by Adjudication

(1) Surviving Spouse Not Entitled to VA Pension. The items, "Is Widow Entitled to VA Pension" and "Reason Widow Not Entitled to VA Pension" of DD Form 1895 will be appropriately completed, checking the box 'Income Exceeds," when VA pension is not payable because of income in excess of the applicable annual income limitation. If "other" must be checked, the reason for the nonentitlement to VA pension will be briefly stated in "Remarks" (e.g., "Excessive Net Worth," "Relationship Not Established," etc.).

(2) Surviving Spouse Entitled to VA Pension. In addition to showing entitlement to VA pension on DD Form 1895, the "Entitlement Computation" portion of the form must be completed.

[NOTE: This form will be used only in Improved Pension cases. Dictated letters will be used in Section 306 or Old Law cases.]

(a) In the "Current Year" column, the four-digit net countable income (IVAP (Income for VA Purposes)) on which pension payments are currently being made will be inserted. This amount will be subtracted from the dollar amount as

previously entered by the service department, and the balance entered as the MIW-SBP payable. If the amount entered as the IVAP equals or exceeds the limit entered by the service department, "none" will be entered on the line for MIW-SBP payable.

(b) If a change in the surviving spouse's income is anticipated for the following year, these lines for IVAP and MIW-SBP payable will be completed inserting the year in the caption under the "next year" column as under subparagraph (a) above.

EXAMPLE: Widow's 1980 income for VA purposes is $600. Anticipated countable income for 1981 is [$2,800]. The eligibility determination of DD Form 1895 would be completed as follows:

ELIGIBILITY DETERMINATION *(LINES 1B AND 1C TO BE COMPLETED BY DOD. LINES 1D AND 1E BY VA)*

1. IS WIDOW ENTITLED TO VA PENSION? ☑ YES ☐ NO (IF "NO", COMPLETE ITEM 2)			2. REASON WIDOW NOT ENTITLED TO VA PENSION ☐ INCOME EXCEEDS ☐ OTHER (SPECIFY IN REMARKS)	
ENTITLEMENT COMPUTATION			CURRENT YEAR IF CHANGED NEXT YEAR OR LESS THAN FULL YEAR	NEXT YEAR (1981) OR CURRENT AND CONTINUING
1A		LIMIT ON INCOME TO BE SUPPLEMENTED	$ 2,950	$2,950
1B	DOD	LESS RSFPP	– 240	– 240
1C	DOD	LIMIT ON INCOME (EXCEPT PENSION) FOR SBP PURPOSES (LINE A MINUS B)	$ 2,710	$ 2,710
1D	VA	INCOME FOR VA PURPOSES BEFORE SBP	– 600	– 2,800
1E	VA	SBP PAYABLE (LINE C MINUS D)	$ 2,110	$ NONE

3. REMARKS

5. RETURN TO

RETIRED PAY DIVISION
U. S. ARMY FINANCE SUPPORT AGENCY
INDIANAPOLIS, INDIANA 46249

4A. VA OFFICE

4B. SIGNATURE

4C. DATE

DD FORM 1 DEC 72 **1895** O/P 1, 1 DEC 72

(3) **Entitlement to Death Pension Not Determined.** If there is a pending claim for death pension, the service department will be informed of the status of the claim and advised that a final reply will be furnished at a later date. Upon final disposition of the pending claim, DD Form 1895 will be disposed of as provided in subparagraph (4) below. If no claim has been received, the item for reason not entitled to VA pension should be checked "Other" and appropriate information entered in "Remarks." The copy will be filed in the claims folder so as to remain on top of all subsequent file material as a flash so that the service department may be informed if a claim is filed at a later date.

(4) **Disposition of DD Form 1895.** DD Form 1895 will be completed with the entry of VA office, signature in the name of the Adjudication Officer and date. The original will be returned to the service department to initiate their payments, if any are to be made, in accordance therewith, or to furnish notice of denial when the MIW-SBP payable has been determined as "None." The copy will be signed and dated by the person preparing the form and filed in the claims folder.

c. **Recomputation of Income.** When it is determined that MIW-SBP is payable, the surviving spouse's income for VA purposes must be recomputed, since this annuity is included as countable income. The MIW-SBP payable will be considered as any other annuity or retirement and subject to the 10 percent exclusion under VAR 1262(E) in the computation of income for VA purposes. The required adjustment of pension will be made at the time the DD Form 1895 is released.

d. **Preparation of Pension Award Involving MIW-SBP.** The following specific requirements will apply:

(1) **Income Data.** The MIW-SBP payable as determined above, will be entered as a type M, Other Annuity or Retirement. If the surviving spouse is also receiving any other annuity or retirement (other than RSFPP which is not countable and not for [entry]), the total income from this source (SBP and Other) will be for entry as type 0.

(2) **Special Law Code(s).** The required reduction in pension will be effected under [the end-of-month or] the end-of-year rule (VAR [1660](A)(2): [see also par. 9.09a re] use of special law [code] 18). In addition, the following will be for entry in miscellaneous code on pension awards involving *SBP Minimum Income Plan ONLY* (and not for use when the SBP benefit is the Survivor Annuity):

(a) **Special Law [Code] 06.** This code will be used when the MIW-SBP is the *only* annuity or retirement received or in Improved Pension cases when the surviving spouse is in receipt of RSFPP.

(b) **Special Law [Code] 08.** This code will be used in Section 306 or Old Law cases when, in addition to the MIW-SBP, the surviving spouse is also receiving RSFPP.

NOTE 1: Special law code 06 or 08, as appropriate will be entered (by [the VDT System or 02M via magnetic diskette] when award action is not required) and maintained in the master record even though the MIW-SBP payable is "None," until the pension award is terminated, so as to provide identification for computer actions. (See par. 41.02b).

NOTE 2: To insure that the automatic notices (par. 41.20) are directed to the proper service department, care must be taken to verify the correctness of the Branch of Service Code previously [entered.]

NOTE 3: When the SBP Survivor Annuity is the benefit paid to the [ ] surviving spouse, special law codes 06 and 08 will NOT be used, since their use would trigger erroneous automatic recomputation of "SBP payable" and/or issuance of an improper notice to the service department. However, the amount of this SBP Survivor Annuity will, of course, be entered as a type M annuity and used in determining the pension rate payable.

e. **Subsequent Actions Due to Changes in Income.** Whenever there is a reported change in income received or anticipated, there must be a concomitant recomputation, a redetermination made of the MIW-SBP payable (from an amount to "None," or vice versa) and, as required, adjustment in the award. For these purposes, even when the MIW-SBP payable is initially or subsequently determined as "None," the special law code 06 (or 08) must continue to be maintained in the master record.

(1) Automatic computer adjustments required by the processing of transactions 49D and 49Q and SPU generated TR 49 (no modifier) will include the redetermination of the MIW-SBP payable in the income computation routines when the record carries special law code 06 and a type M annuity amount.

(2) When the pension record is under special law [code] 08, computer redetermination of the MIW-SBP payable is not possible.

(a) If the "other annuity or retirement" field is type M, under special law [code] 08, the amount is considered in the automatic adjustment program as the "New" MIW-SBP payable without any need for computer reduction when computing income for VA purposes.

(b) If there is a type 0 annuity, under special law [code] 08 *or* 06, the automatic adjustment program accepts and uses the type 0 amount without attempting any recalculation of MIW-SBP payable.

(c) Accordingly in these instances the adjudicator must compute and enter the new MIW-SBP payable, regardless of the type of transaction used [to enter the data.] In computer processing of IQ transactions against such accounts, the questionnaire is referred for regional office action with an IQ03.

f. **Notices to Service Departments.** See paragraph 41.20

41.19 DEPENDENCY AND INDEMNITY COMPENSATION—OFFSETS OF PAYMENTS

a. **General**

(1) **Relationship Between (Dependency and Indemnity Compensation) DIC and SBP (Survivor Benefit Plan) Payments.** If a surviving spouse is entitled to both SBP and DIC benefits, the military finance center may pay only the amount of SBP in excess of the basic DIC. There is no bar against full payment of both SBP and DIC to a child or parent.

(2) **Basic DIC Defined**

(a) For purposes of this subchapter, basic DIC means the rate payable to the surviving spouse as if there were no children (total dependency code 10) for the veteran's pay grade, excluding any allowance for aid and attendance.

(b) In an apportionment case, if the amount paid to the surviving spouse is less than the basic DIC, consider the lesser amount to be the basic DIC for purposes of this subchapter.

(c) Under 38 CFR 3.20 a surviving spouse's benefit rate for the month of the veteran's death may not be less than the rate of compensation or disability pension the veteran would have received except for the veteran's death. This regulation applies only to the rate of payment and does not redefine the death benefit being paid. If death was service-connected, the benefit payable for the month of death is DIC and not compensation. Do not, however, consider the veteran's rate for the month of death as the DIC rate for reporting purposes. In replying to service department inquiries, furnish the basic DIC rate (38 CFR 3.5) and award effective date (i.e., the first day of the month of the veteran's death).

(3) **Overpayment of SBP.** If SBP was paid to a surviving spouse entitled to DIC, the VA will offset any overpayment of SBP from the DIC award in an amount not greater than the basic DIC payable. Finance will send these moneys offset to the appropriate military finance center.

(4) **Effective Dates.** The effective dates of DIC and SBP may not coincide since the effective date of an SBP annuity is always the day following the date of death. The effective date of DIC is determined under 38 CFR 3.400.

b. **Service Department Payments of SBP**

(1) **Notification to VA.** If a surviving spouse is entitled to SBP, the military finance center begins payment regardless of whether DIC is payable. When SBP payments begin, the military finance center will notify the VA regional office of jurisdiction (as indicated by military finance centers records, or if not of record, based on beneficiary residence). Upon receipt of the notice which will include an authorization for DIC offset signed by the surviving spouse, take action under this subchapter. If the notice is not of record in a claim for DIC, and evidence on file indicates SBP is payable (i.e., because the records show the deceased veteran was a military retiree), take award action under subparagraph c(3) below. Otherwise, take award action under subparagraph c(7) below.

(2) **Dual Entitlement.** The VA has no regulation preventing a surviving spouse from receiving DIC based on the death of one veteran (A) while also receiving SBP based on the death of another veteran (B). The service department does have such a prohibition which the VA will honor if the service department submits a request for DIC offset for veteran (A) signed by the surviving spouse.

c. **Adjudication Procedures**

(1) **DIC Claim Pending, Disallowed or No DIC Claim Filed.** If no claim for DIC was filed, or if a claim is pending or was disallowed, Adjudication will check the appropriate block on the form received from the inquiring military finance center to show the status of the case, return the form to the finance center, and annotate the claims folder by file flash. If DIC is subsequently awarded, take action under the instructions in this subchapter.

(2) **DIC Award Running Before Notice of SBP Award.** If the DIC award is running when the VA receives notice of the SBP award from the military finance center, take the following action:

(a) Enter special law code 06 into the master record to insure computer generated notification to the military finance center when the DIC award is amended or terminated.

(b) Route the folder by OF 41 to Finance so that they may obtain a statement of the amount of SBP payment to be deducted from the DIC award. As the basic DIC rate (as defined in subpar. a(2)above) may be different from the DIC rate being paid, annotate the OF 41 to show the basic DIC rate to be used by Finance in taking deduction action.

(c) Take steps to ensure that Finance returns the folder within 5 workdays.

(d) Upon return of the folder, check to be sure that Finance took deduction action and review the master record to be sure that the action to enter the special law code 06 did not reject.

(3) [**Grant of DIC—Entitlement or Potential Entitlement to SBP Indicated.** When an original award of DIC is made to a surviving spouse, and there is evidence in file that the payee is entitled, or is potentially entitled (par. 41.19c(7)(a)) to SBP, take the action described below.

(a) Prepare the DIC award as usual, but do not generate (GAP) the award. Instead, enter GAD (Generate And Display) in the next screen field and make a copy of the displayed award.

(b) Show the basic DIC rate (par. 41.19a(2)) on the award and refer it with the claims folder to Finance. Maintain control to ensure the folder is returned within 5 workdays.

(c) Finance will complete a report of contact and return the folder to adjudication.

1. If The report of contact shows there is no SBP entitlement, GAP the award (do not show special law code 06) and authorize (CAUT) as appropriate.

2. If the report of contact shows there is entitlement to SBP but there is no amount to be recovered, GAP the award and authorize as above but show SL 06 on the award line.

NOTE: The generated award letter is appropriate in the above two instances because there are no SBP deductions.

3. If the report of contact indicates there is an amount of SBP for offset, prepare the award as follows. Enter total withholding on the award line using type I withholding from the date of entitlement and show special law code 06. Make certain to suppress the award letter. After the award showing total withholding has been authorized, route the claims folder to Finance for their action to establish the offset. Deliver these folders to Finance daily. Do not take the appropriate end product at this time, but do maintain the pending issue.

When the folder is returned from Finance make sure the offset appears on the M01 screen then process an amended award as follows to release payment. Show special law code 06 and remove the withholding (show "0" entry under Type withholding) to pay full DIC to which entitled. When the award is generated, the legend "A/R EXISTS—REFER TO FINANCE IF RETROACTIVE INCREASE IS INVOLVED" will appear. Send the award, with the claims folder, to Finance for necessary FISA action. Leave the end product pending until the folder is returned from Finance and the award is authorized.

NOTE: In each case above, do not file the copy of the displayed award in the claims folder (par. 1.07c, 10). These awards will be destroyed in accordance with RCS VB-1, part I, item No. 13-052.400. Reports of contacts will be filed in the claims folder.

(4) **Notice to Claimant.** In all DIC awards involving SBP deduction, suppress the generated letter and dictate a letter. The dictated award letter must fully inform the claimant of the award (38 CFR 3.103(e)) and that the award is subject to offset for concurrent payments of the SBP annuity. Enclose VA Form 21-8765, Service-Connected Death Award Attachment, with dictated award letters for original or reopened DIC awards.]

(5) **DIC Claim Not Timely Filed.** If a DIC claim is not filed within 1 year from the date of death of a veteran and the claimant is receiving SBP, deductions for SBP overpayment can be made only from the effective date of the DIC award instead of the effective date of SBP payments. Annotate the OF 41 to the Finance activity to alert Finance of the effective date of the award for any DIC claim not filed timely.

(6) **Communications With the Military Finance Centers.** Finance will take deduction actions and make telephone contact with the military finance centers. After necessary adjustment, reduction or termination of the SBP annuity account, the military finance center will inform the regional office if any additional offset is required. If Adjudication receives this notice, send it to Finance together with the claims folder, for necessary action.

(7) **DIC Award—No Indication of Entitlement to SBP.** Due to the potential for large overpayment in DIC awards for surviving spouses also entitled to SBP, message, "REFER TO FINANCE FOR SBP A/R REVIEW," will appear each time an original DIC award to a surviving spouse is GAP'ed.

(a) SBP is payable to a surviving spouse only if the deceased spouse was a military retiree or eligible to retire at time of death on active duty. Therefore, process any case showing no potential entitlement to SBP without referral to Finance. In addition to the signature of an adjudicator and approval of an authorizer, one individual within the division (designated by the Adjudication Officer) is required to review and approve awards not being referred to Finance. The designee will sign, date and make the annotation "No SBP payable" in the lower right margin beneath the authorizer's signature on the award print.

(b) If there is any question as to whether SBP is payable, process the award under subparagraph c(3) above.

d. **Finance Procedures.** Finance procedures are found in MP-4, part IV, chapter 3.

e. **Special Instructions for the Manila Regional Office.** The Manila regional office will follow the procedures contained in this subchapter with the following exceptions:

(1) Since the Finance Division establishes and maintains accounts receivables locally, two-step award processing is not required.

(2) Contact with the military finance centers will be made by teletype rather than by telephone.]

41.20 NOTICES TO SERVICE DEPARTMENTS

a. **When Required.** The appropriate service department will be notified of changes in the entitlement of any death pension beneficiary as having entitlement to SBP under either annuity plan, as follows:

(1) **Section 306 Pension.** Notify the service department of termination for reason other than death or remarriage. Also, notify the service department of any changes to 1978 protected income. For Section 306 pension cases, income changes (except change to terminate due to excess income or change to 1978 protected income) do not affect MIW payment. The service department will continue payment based upon the MIW rate during 1978 plus an amount equal to the cumulative COL (cost-of-living) increase in the MIW limit. The "protected" MIW amount, plus the amount equal to all increases in the limit will be included in the master record income segment as "other retirement" income. During COL adjustment processing, [ ] the existing "other retirement" amount will be increased by the increase in the MIW limit, provided special law code is "06" and retirement type is "M." If special law code is "08" and/or retirement type is not "M," the case will be written out under MSG 741, NOT ADJUSTED—SPECIAL LAW XX, and the case will be reviewed by an adjudicator for submission of the current income data, including the adjusted MIW amount.

(2) **Improved Pension.** Notify the service department of termination for reason other than death or remarriage. Also, notify the service department of all income changes, specifying recomputed IVAP and recomputed MIW annuity. These cases will not be automatically adjusted during the COL adjustment; MSG 741, NOT ADJUSTED—SPECIAL LAW XX, will issue.

(3) **SBP Survivor Annuity Cases With Type M Annuity Income.** Advise the service department of surviving spouse's death or remarriage (special law code 06 or 08 not in order).

b. **Computer-Generated Notices**

(1) **Death Pension.** As determined only by the presence of special law code 06 or 08 generated notice to the service department identified by the master record branch of service code will issue when benefits terminate due to the death or remarriage of the surviving spouse. MSG 718, SBP BENE—VA BENEFITS TERMINATED (REMARRIAGE) (DEATH), on VA Form 20-8270 will issue when a pension account is so terminated.

(2) **DIC.** VA Form 20-8270 will issue to the service department only if there is no veteran's social security number in the master record. All other transactions will be transmitted to the service department by magnetic tape if the following criteria are met.

(a) Master record type is A, B or E (if terminated this cycle).
(b) Payee code is 10.
(c) Special law code (FI 043) or miscellaneous code (FI 066) is 06 or 08.
(d) Entitlement code ends in 7.
(e) A transaction 09, 11, 13, 28 or 98 updated the master record this cycle.

CHAPTER 42. ELECTIONS IN DEATH CASES

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CHAPTER 42. ELECTIONS IN DEATH CASES

SUBCHAPTER I. ELECTIONS BETWEEN SERVICE PENSION, OLD LAW PENSION, SECTION 306 PENSION, AND IMPROVED PENSION

42.01 GENERAL

a. **Old Law and Section 306 Pension.** Under the provisions of Public Law 95-588, effective as of January 1, 1979, the only election which can be made in Old Law nonservice-connected death cases is to Improved Pension benefits. Also, in cases involving Section 306 nonservice-connected death benefits, only Improved Pension may be elected. The instructions in subchapter II of chapter 29 relating to the protection afforded a veteran in receipt of pension under Section 306 or the Old Law, and of the right to Improved Pension, are equally applicable to surviving spouses and children (when there is no surviving spouse or the children are outside the custody of the surviving spouse) in death cases. The paragraphs in this chapter are intended to highlight the manner of applying the chapter 29 instructions to death cases.

b. **Spanish-American War Surviving Spouses**

(1) Spanish-American War Surviving Spouses entitled to pension under 38 U.S.C. 536 may elect payments at the rates provided by Improved Pension under the conditions (other than service requirements) prescribed by 38 U.S.C. 541. Such election is irrevocable upon negotiation of the first check received under the Improved Pension.

(2) Spanish-American War surviving spouses who are entitled to additional pension for aid and attendance will continue to be paid whichever is the greater benefit—pension under 38 U.S.C. 536 or Section 306 pension, if Improved Pension is not elected. No election between the 38 U.S.C. 536 and Section 306 programs will be required and unlimited changes may be made to pay the greater rate.

c. **Finality of Election.** The provisions of paragraph 29.10 as to finality of election (and voidability) are also for equal application in death cases. Additionally, as provided by [38 CFR 3.701(a),] termination of a marriage or marital relationship, which was the basis for termination of an Old Law or Section 306 pension award, will not restore the right to receive Old Law or Section 306 pension. The claimant's only entitlement to pension will be under the Improved law in these cases.

42.02 EFFECT OF SURVIVING SPOUSE'S ELECTION

The election by a surviving spouse also controls the rights of all children in the case except for those children outside of the surviving spouse's custody who are receiving an apportioned share of the surviving spouse's Section 306 or Old Law award. [ ]

a. [A] surviving spouse's election of Improved Pension will not be permitted to deprive a child not in the custody of continued entitlement to receive the same rate of payment which they were receiving under Old Law or Section 306 pension. Such [a child may elect Improved Pension if it is to the child's advantage.

b.] If the [protected] rate is continued to the children, their dependency will be reflected in the surviving spouse's award with the additional amount for each child included in determining the surviving spouse's maximum rate payable, with the rebuttable presumption that the children's income is not considered as being available to the surviving spouse, and with the apportioned amount shown as a type "1" withholding.

[ ]

42.03 CHILDREN

a. **No Surviving Spouse on December 31, 1978.** Children in receipt of or entitled to receive pension on December 31, 1978, at the full shares payable to children because there was no surviving spouse, have the same elective rights as veterans and surviving spouses.

[(1) If there is no surviving spouse, the election of a child entitled to Section 306 or Old Law pension to receive Improved Pension may not increase the rate payable to a child(ren) remaining under Section 306 or Old Law pension (38 CFR 3.704(a)). The rate payable for each child remaining under Section 306 or Old Law may not exceed the amount which would be paid if all children were receiving under that law.

Example: Three children are each receiving $37 under Section 306 pension. Two children elect Improved Pension. The child remaining under Section 306 pension must continue to be paid as one of three children. Under Improved Pension each child stands alone and the existence of the other two children will not be a factor.

(2) If an additional child(ren) is established with eligibility only to Improved Pension, the corresponding Section 306 or Old Law award must be adjusted.

Example: Child alone under age 18 is receiving $61 under Section 306 pension. Child over age 18 enters school and establishes eligibility under Improved Pension. The Section 306 award must be adjusted to pay $43, the rate for one of two children. If eligibility for the school child terminates prior to the termination of the Section 306 award for the child under age 18, the Section 306 award must be adjusted to pay the rate for one child.

(3) If a surviving spouse reestablishes entitlement after 1978, entitlement is under the Improved Pension program and the children in the surviving spouse's custody have entitlement only to Improved Pension. However, children not in custody of the surviving spouse have their Old Law or Section 306 pension rates protected.

Example: Child alone under age 18 not in the surviving spouse's custody is receiving $61 under Section 306 pension. Surviving spouse's eligibility is restored under Improved Pension. The surviving spouse's award will reflect the child's dependency to determine the maximum rate payable, with the rebuttable presumption that the child's income is not considered as being available to the surviving spouse, and with the $61 amount shown as a type 1 withholding.

b. **Surviving Spouse Receiving on December 31, 1978**

(1) Children in custody have no separate right of election. Upon termination of the surviving spouse's entitlement for any reason, the children's only entitlement is to Improved Pension.

(2) Children out of the surviving spouse's custody having entitlement on December 31, 1978, have a separate right of election if the surviving spouse's entitlement is terminated for any reason.

Example: A child receiving an apportioned Section 306 rate of $28 is still entitled to the $28 rate upon the termination of the surviving spouse's award. The child's award must use special law code 10 to continue the protected rate. (See par. 15.32a(10).)]

SUBCHAPTER II. ELECTIONS BETWEEN DEPENDENCY AND INDEMNITY COMPENSATION AND DEATH COMPENSATION

42.04 GENERAL

The right of election of DIC exists when death compensation is being paid (or is payable) by reason of the service-connected death of a veteran prior to January 1, 1957, or in cases in which death occurred on or after May 1, 1957, and prior to January 1, 1972, while National Service Life Insurance or United States Government Life Insurance was in force under inservice waiver of premiums (38 U.S.C. 724). [(38 CFR 3.702)] (See par. 32.06 refurnishing application.)

42.05 NOTICE TO ELIGIBLE PERSONS

Whenever it is determined that there is entitlement to DIC, the beneficiary or claimant will be fully advised of this fact and of the right to elect. Neither the failure of a beneficiary to reply to a previous notice of right of election nor even a prior refusal to elect DIC, will prohibit the furnishing of another notice or reminder whenever it may be assumed that the beneficiary may not have fully understood (or received) the earlier communication. A followup notice or reminder will, however, be mandatory in those cases routinely encountered in which election of DIC was previously disadvantageous.

a. **Inservice Waiver of Insurance Premiums Cases.** Some cases may be encountered in which the beneficiaries are receiving death compensation because the veteran died on or after May 1, 1957, and prior to January 1, 1972, with insurance in force by waiver of premiums under 38 U.S.C. 724. Pursuant to Public Law 92-197 which repealed the former section 417(a) of title 38, United States Code which had limited entitlement to death compensation and under [38 CFR 3.5(b)(3) and 3.702(a),] effective January 1, 1972, these beneficiaries have an unrestricted right to elect dependency and indemnity compensation. All such death compensation beneficiaries were notified of their right to elect DIC but not all availed themselves of that right. When such cases are encountered in routine handling a reminder of right of election will be furnished and related actions taken as provided in this subchapter. If election of DIC is received, [38 CFR 3.114(a)(3)] applies.

b. **Dependent's Educational Assistance.** Information will be furnished when appropriate, that election of DIC by the surviving spouse (or by or for a child if there is no eligible surviving spouse) may be followed by an election of DEA benefits. However, the beneficiary or claimant will be cautioned as to the effect of an election of DEA benefits; in particular, when payment of DEA benefits constitutes a final election and is a bar to payments of DIC (or compensation or pension) to or for the child in the same or any other case. (See subch. IV, this chapter.)

c. **Federal Employees Compensation.** See subchapter III, this chapter.

d. **Two-Parent Cases.** See subchapter IV, this chapter.

42.06 NOTICE TO SURVIVING SPOUSES

When a surviving spouse is receiving or entitled to receive death compensation a reminder of the right to elect DIC will not be withheld pending receipt of certification of the veteran's pay grade from the service department. Prompt notification is important in order that payments of DIC may be made effective from the earliest possible date, subject to later adjustment from the same date. The information furnished in the notice will, of course, be adjusted to fit the circumstances.

a. When known, the exact rate of DIC payable will be stated in the notice, including the additional amount, payable under 38 U.S.C. 411(b) of [$53, as of April 1, 1984] for each child under age 18. When there are children over age 18 attending school or incapable of self-support, the notice should specify the additional amounts of [$118] or [$233] payable for such children [, as of April 1, 1984].

b. **Certification of Basic Pay Grade Made Prior to December 1, 1966.** When the latest certification of pay grade was made prior to December 1, 1966, a new certification will be requested from the service department if it is indicated that the veteran held a higher rank in service, for a period of 6 months or more, than that held at death or discharge. Notice of the right of election will not be withheld pending receipt of the recertification.

NOTE: Posthumous promotions have no effect on pay grade for DIC award purposes, except when the serviceperson was in missing-in-action status at time of death on and after February 28, 1961 (38 U.S.C. 402(a)). (See also par. 32.16b.)

c. **Certification of Basic Pay Grade Under Public Law 92-169**

(1) Public Law 92-169 enacted November 24, 1971, amended 38 U.S.C. 402(a) to provide that when a [serviceperson] is promoted while in a missing status and it is subsequently determined that death occurred prior to the effective date of the promotion, the pay grade for purposes of the payment of DIC will be that to which the veteran was promoted. For the payment of DIC, the act was effective the date of enactment. This provision is applicable to persons promoted while in a missing status on and after February 28, 1961. Prior to Public Law 92-169, pay grade for DIC purposes could only be certified as that held on the date of actual or presumed death when this date was prior to the effective date of promotion.

(2) If any inquiry regarding a possible increase under Public Law 92-169 is received from or on behalf of a surviving spouse receiving DIC based on death in service, a recertification of pay grade will be requested providing death occurred on or after February 28, 1961, and the report(s) in file show the veteran was carried in a "missing" status by the service department at the time of death. This will be accomplished by VA Form 60-3101, Request for Information, directed to the appropriate records center indicated in MP-1, part II, chapter 12. The item "Data Requested" on VA Form 60-3101 will be checked "Other" and in "Additional Information Requested," a specific request will be made for a determination and, if in order, a recertification of pay grade under 38 U.S.C. 402, as amended by Public Law 92-169.

(a) A recertification will not be requested when the basic requirements as to date of death and missing status are not established. Also, recertification will not be initiated in the absence of an inquiry by or for the claimant, solely because a case is encountered in which the Report of Casualty in file shows the veteran was carried in a missing status and that death occurred subsequent to the specified date. A recertification will be requested on VA initiative only when these conditions exist and there is a positive allegation or other evidence in file that the veteran was promoted while in a missing status to a higher rank than that certified on DD Form 1300, Report of Casualty.

(b) When a certification is received (on VA Form [60]-3101 or otherwise) showing a higher pay grade, the [surviving spouse's] and, in order, any apportionee(s)' awards will be adjusted to pay DIC based on the higher grade. The effective date of increase or award under Public Law 92-169 will be determined under VAR 1114(A) but may not be earlier than November 24, 1971.

(c) When a request for recertification of pay grade is returned showing no change is in order, the claimant will be informed but will not be given the right to appeal since this is a service department determination. If dissatisfaction with the determination is expressed, the claimant will be referred to the service department. When recertification is requested on the initiative of the VA, notice of a negative determination will not be furnished the claimant unless an inquiry is received from him/her.

[d.] **Incorrect Certification of Pay Grade** (See par [42.09c.)]

42.07 NOTICE TO CHILDREN

When there is no eligible [surviving spouse] and a child is receiving death compensation or, upon the death or remarriage of a [surviving spouse] receiving death compensation, a notice of the right to elect DIC as the greater benefit should be sent to any remaining child, including those to whom FL 21-136 is dispatched at a child's approaching age 18 along with information concerning the right to elect Dependents' Educational Assistance.

NOTE: When there is an eligible [surviving spouse], her/his right to elect DIC is controlling upon any child in the case under age 18. However, a child age 18 or over has an independent right to elect DIC (VAR 1702(B)).

42.08 NOTICE TO PARENTS

A reminder of the right to elect DIC will not be given to a parent when the current or anticipated future monthly rate of such benefit would be less than the death compensation rate. Even though the current DIC rate is the greater benefit, it may become the lesser rate in the future because of increases in social security or other retirement benefits. If an election is received from a parent, it is important that the parent be fully informed of the finality of an election and the effect of future increases in annual income on the rate of DIC payable as compared to the effect on death compensation entitlement.

a. If the file shows that income from sources included in determining DIC entitlement, but excluded from dependency determinations for death compensation entitlement, when added to the claimant's income as reported for death compensation purposes, would result in the payment of DIC at a lower rate or, if for any other reason, the DIC rate would be the lower rate, the parent will be informed of the exact monthly rates payable under each benefit and that no further action will be taken unless he/she furnishes a statement over his/her signature that a lesser benefit would be preferred.

b. If, after consideration of all known facts, it is indicated that payment of DIC would be to the payee's advantage, and upon receipt of an election, appropriate award action will be promptly taken to authorize the greater benefit. The parent will be informed that future increase in income could affect the rate of DIC and if he/she wishes to reconsider his/her election, he/she should so notify the VA without cashing any check for DIC since the negotiation of a check thereunder will consitute an irrevocable election.

42.09 RECEIPT OF ELECTION–GENERAL

Upon receipt of an election, the adjudicator will determine whether there is any prohibition against the payment of DIC and, if not, whether it is to the advantage of the payee to receive DIC.

a. **Prior Election of Federal Employees' Compensation.** When the claims folder shows that the claimant has elected, applied for or is in receipt of Federal Employees' Compensation, the procedure provided in subchapter [III] of this chapter will be followed to determine whether there has been a final election such as would constitute a bar to payment of DIC (VAR 1708(A)).

[b.] **Determination of Greater Benefits.** If the monthly rate of DIC would be less than the present rate of death compensation, award action will not be taken on the election. The payee will be informed that no action has been taken since the benefits being paid exceed the amount of DIC which is payable. The payee will also be informed of the exact monthly rates payable under each benefit and that no further action will be taken unless he/she furnishes a statement over his/her signature that he/she prefers the lesser benefit.

[c.] **Prompt Award Action on Surviving Spouse's Claim.** In consonance with paragraphs 15.34 and 42.06, award action will be promptly taken, notwithstanding the nonreceipt of the certification of the veteran's pay grade, if it is determined that the DIC payable on the basis of the data in file, is greater than the death compensation payable. An award of DIC will be authorized on the basis of the pay grade indicated on the separation documents for the veteran's last period of service, if such is of record. If this information is not of record, the *minimum* DIC rate based on enlisted or officer status should be authorized subject to possible increase upon receipt of pay grade data from the service department (par. 32.16a(2)).

(1) An amended award will be used to authorize the change in benefits, effective as provided by VAR 1400 (C)(3).

(2) Change in entitlement code will be effected and change reason code 30 shown on the award line first authorizing the DIC rate (par. 15.19c).

[d.] **Revocation of Election.** When, subsequent to an award of the elected benefit determination is made that the election was in fact not advantageous and that the payee has the right to revoke the election, she/he will be informed of all the facts and given a new right of election.

(1) Restoration of death compensation will be made retroactively from the effective date of the award of DIC if an overpayment will not be created. Payments of DIC reflected in prior net award data will effect adjustment of the account.

(2) If the DIC rate paid exceeded the death compensation rate payable, death compensation will be restored effective date of last payment in accordance with VAR 1500(B) (2).

42.10 APPORTIONMENTS

a. **Basic Rule.** Under the provisions of VAR 1461(B) (3) a [surviving spouses'] election of DIC will not be permitted to deprive a child under 18 and not in her/his custody of the apportioned share payable as death compensation.

NOTE: A DIC [surviving spouse's] award is apportioned only for a child or children under age 18. Children over age 18 have separate and additional entitlement under 38 U.S.C. 414(b) or (c).

b. **Computation.** In computing the DIC rates payable in apportioned cases, it will first be necessary to determine the total DIC payable; i.e., certification of pay grade (if not already of record) will be obtained. The DIC rate for the pay grade certified, including additional amounts payable for any child not yet age 18 under section 411(b), will be obtained from the table in appendix B. Any additional amount payable for any child over age 18, [($71], school child, [$140], permanently incapacitated child) will be added. Computations will be undertaken *for the current and future periods of entitlement* for full information (and award) purposes. The computation must meet the following conditions:

(1) The [surviving spouse's] individual share may not be reduced to less than 50 percent of the amount to which she/he would otherwise be entitled, EXCEPT that it may be reduced to any amount as necessary to meet conditions outlined in subparagraph (2) below.

(2) The apportioned shares for children may not be less than the death compensation rate.

[(Pars. 42.11 through 42.19 deleted.)]

SUBCHAPTER [III]. FEDERAL EMPLOYEES' COMPENSATION

42.20 GENERAL

The provisions of chapter 29, subchapter IV, are also for general application with respect to the adjudication of death claims involving entitlement to Federal Employees' Compensation administered by the Office of Workers' Compensation Programs. Particular reference is made to the following:

a. The claimant's election will be requested only by the OWCP and not by the VA (pars. 29.20b and 29.21);

b. The protection of concurrent awards approved before September 13, 1960 involving civilian employment (par. 29.18a, NOTE);

c. The prohibition against concurrent awards on and after September 13, 1960, for death incurred before, on, or after that date (par. 29.18); and

d. The elimination of the prohibition against concurrent payment of pension and FEC benefits based on civilian employment (par. [29.18b(2)].

NOTE: Persons receiving FEC based on death due to military service may elect (reelect) to receive DIC. However an election (and receipt of payment) of DIC is final (VAR 1708(A)(2)).

42.21 EFFECT OF ELECTION

a. **Elections by [Surviving Spouse].** The principle that the [surviving spouse's] election controls the rights of children in that case, whether in or out of her/his custody (VAR 1708(A)[(3)]), is applicable only to cases in which the primary title to VA benefits is vested in the [surviving spouse]. There is no prohibition when the children have an independent right of entitlement. The following rules will be applied in determining when FEC benefits may be paid to the [surviving spouse] concurrently with VA benefits to the child:

(1) **In DIC Cases**

(a) A child who is over age 18 and otherwise entitled may received DIC concurrently with the payment of FEC to the [surviving spouse.] The DIC rate payable to or for such child ([$71] or [$140]) is the rate payable under 38 U.S.C. 414(b) or (c), when there is an eligible [surviving spouse.]

(b) When a child over age 18 is eligible for FEC and DIC or DEA because of school attendance of FEC and DIC is permanently incapable of self-support before reaching age 18, a separate election is required because the child, having independent entitlement to these VA benefits, has a right of election which is independent of and not affected by the [surviving spouse's] election. For the same reason, DEA or special restorative training allowance under 38 U.S.C. ch. 35, may be paid to or for a child under the age of 18 years, pursuant to an election, concurrently with the payment of FEC benefits to the [surviving spouse.]

(2) **In compensation cases,** the [surviving spouse's] election controls the benefit payable since the child has no independent entitlement to VA benefits.

b. **Elections by Child or Parent.** Such elections are governed by the following considerations:

(1) When there are two or more persons within a class (children or parents) and FEC benefits are elected by some but not all members of the same class, the rights of the others in the class to VA benefits are not affected. However, the VA death benefit payable to a child(ren) or parent not electing FEC will not exceed the amount which would be payable to him/her if all children or both parents had filed claim for VA benefits.

(2) An election of FEC benefits for a child under the age of 18 as the person primarily entitled will bar VA benefits after the child attains the age of 18. (But see subpar. (4) below.)

(3) If FEC benefits were paid for a [surviving spouse] and children based on the [surviving spouse's] election, and the [surviving spouse] remarries or dies, an election may be filed on behalf of the children.

(4) An election is binding and final only for periods of concurrent eligibility. In claims based on school attendance, concurrent eligibility extends from the date eligibility arises (e.g., from the child's 18th birthday if the veteran died before that date) to age 23, or marriage, or completion of 4 years of education beyond high school, whichever is earlier. As eligibility to FEC benefits based on school attendance terminates upon the happening of any of these events, VA benefits may be payable upon election at the termination of FEC for any of the above reasons.

c. **Election of FEC Based on Death in Military Service is Not Final.** Office of [Workers'] Compensation Programs has determined (the VA General Counsel concurring) that the finality of election provision of the FEC (5 U.S.C. 8116(b)) does not apply to cases in which FEC is being paid based on death in military service. Accordingly, VAR 1708(A) was amended to delete the provision concerning finality of elections made after September 13, 1960. However, the statutory provision (38 U.S.C. 416) still prohibits any return to FEC benefits, once DIC has been granted.

(1) Prior to January 1, 1957, compensation under FEC was payable for disability or death, of a reservist, incurred in active service during peacetime. For FEC purposes, the Korean conflict period was considered peacetime service. If disability or death compensation was also payable by the VA, it was necessary that an election be made between FEC and VA benefits.

(2) **Action on Elections.** When an election is received, award action, if otherwise in order, will be taken provided the benefit elected exceeds the FEC benefits to which the claimant is entitled:

(a) The award may be effective the date of receipt of the election, which, for the purposes of VAR 1400(J), will be the date the election was received in the Office of [Workers'] Compensation Programs. In original claims the effective date will be as authorized by applicable law.

(b) These awards will be subject to any payments made by the OWCP over the same period of time; this is, the difference between the VA and OWCP monthly rate will be made payable from the award effective date with the OWCP rate entered as type 1 Withholding. The full rate of VA benefits will be payable from the date of termination of FEC benefits.

(c) When it is shown that the FEC benefit is greater than the VA benefit, the claimant and the OWCP will be informed that no action will be taken on the election unless the claimant furnishes a statement over his/her signature that he/she prefers the lesser benefit. Al full explanation should be provided.

42.22 NOTICE TO CLAIMANTS

The letter to OWCP requesting that an election be obtained from the claimant must contain all necessary information specified in the applicable provisions of the foregoing paragraphs and sufficient additional information concerning the VA benefit to enable OWCP to fully inform the claimant of the effect of an election. (See par. 29.21.)

a. This letter must also include notice of VA benefits based on school attendance which might be payable for a child over the age of 18. This is particularly important in cases in which the child is approaching his/her 18th birthday and may be eligible for DIC or DEA benefits for periods after that date.

b. In addition, in the event of an election of FEC whereby payment of VA benefits to, or on account of children under or over 18 years of age are barred, the notice of disallowance or discontinuance will include information as to possible future eligibility of such children to VA benefits.

SUBCHAPTER [IV]. TWO-PARENT CASES

42.23 LIMITATIONS

a. **General.** The right of a child to receive VA death benefits based on the service of more than one parent is limited by VAR 1703 (38 U.S.C. 3104(b) (2)) as to concurrent payments of death pension, compensation or DIC; and by VAR 13023 (38 U.S.C. 1762) as to payment of Dependents' Educational Assistance or restorative training (DEA benefits) and death or disability pension or compensation, or DIC. (Also see par. 10.15 re DEA benefits.)

(1) There is no prohibition against concurrent payments based on the service of two or more parents *not in the same parental line*, nor when *one* or *both parents in the same parental line are living*, EXCEPT THAT election of DEA benefits is a bar to further payments of pension, compensation or DIC based on school attendance by a child over age 18 in the same or any other case. Furthermore, receipt of DEA benefits prior to age 18 will preclude payment of pension, compensation or DIC to or for the child after age 18, either during a veteran's lifetime or after death.

(2) The general prohibition against concurrent payments is applicable as to benefits based on the *death of two or more parents* in the *same* parental line when the death of one (or both) of the parents occurred *on or after June 9, 1960.* However, when both such parents died before June 9, 1960, there is a specific prohibition only (on or after January 1, 1957) against concurrent payments of DIC in one case, with DIC or death compensation (but not death pension) in the other.

[ ]

[b.] **Both Parents Dead–One (or Both) Died on or After June 9, 1960**

<table>
<tr><th></th><th>Parents NOT in Same Parental Line</th><th>Parents in SAME Parental Line</th></tr>
<tr><td>[*] Child of any age</td><td>DIC, comp. or pension in one case
- payable concurrently with -
DIC, comp. or pension in the other.</td><td>Concurrent payment of DIC, comp. or pension in the two cases is prohibited.</td></tr>
<tr><td>Child under 18 or helpless</td><td>DEA - payable with -
DIC, comp. or pension in one case
- concurrently with -
DIC, comp. or pension in the other.</td><td>DEA - payable with -
DIC, comp. or pension in one case
- is a bar to -
DIC, comp. or pension in the other.</td></tr>
<tr><td>Child over 18 attending school</td><td colspan="2">Receipt of DEA is a bar to further payments of DIC, compensation or pension in the same or any other case.</td></tr>
</table>

[c.] **One Parent Living–One Dead–or Both Living**

	Parents NOT in Same Parental Line	Parents in SAME Parental Line
[*] Child of any age	Compensation or pension (or DIC) in one case - payable concurrently with - compensation or pension (or DIC) in the other.	
Child under 18 or helpless	DEA - payable with - compensation or pension (or DIC) in one case - concurrently with - compensation or pension (or DIC) in the other.	
Child over 18 attending school	Receipt of DEA is a bar to further payments of compensation or pension (or DIC) *in the same or any other case.*	

*[*NOTE: If the child is a veteran with entitlement to Improved Pension benefits in his/her own right and is also entitled to pension based upon his/her parent's service, only the greater of these two benefits may be paid. (VAR 1700(A)(4).]*

42.24 SAME PARENTAL LINE

The term "same parental line" means more than one father or more than one mother as defined for VA benefits purposes. This includes natural, adoptive and stepparents.

42.25 FORM OF ELECTION

A statement over the signature of a child eligible for direct payment or of the person claiming benefits for the child will be accepted as an election.

42.26 NOTICE TO CLAIMANT

Claimants will be informed of the right of election (and reelection, if any) and of the rates payable in each case. Award action should not be deferred, however, when it is clear that benefits in one case are more advantageous than in another and the claimant will be so informed. It may be assumed that the greater benefit is elected unless a specific request is received for discontinuance of benefits in that case in order to receive the lesser benefit in the other case, and the claimant so informed in the notice of award.

42.27 AWARDS TO OR FOR ELECTING CHILDREN

Under the provisions of VAR 1503(G) payments of death compensation, pension or DIC being made to or for a child in one case, will be terminated (under reason code 30) effective the commencing date of an award of the elected benefits to or for that child in another case based on the service of another parent in the same parental line. However, VAR 1659(A) provides that such award will be made subject to any payments of these benefits in the other case made to or for the child over the same period of time. This offsetting will be accomplished as follows:

a. When a child receiving compensation, pension or DIC under a separate award in case A, becomes entitled to and elects another benefit in case B (based on service of another parent in the same parental line):

(1) The payments in case A to or for this child should be terminated by VA Form 21-8046 effective the 1st day of the month following the month in which the action is taken.

(2) The award of the elected benefit in case B will be made at the differential rate payable for all periods of entitlement from the commencing date of the new award.

(3) Notation in "Remarks" will specify that the award is "Subject to payments for this child under Payee #_____ in XC_____ from (commencing date Case B award) to DLP in that case."

b. When the [surviving spouse] in case A is receiving an additional amount or her/his award is apportioned for the child electing benefits, the action prescribed in paragraph 42.30b will be taken.

c. When, in case A, the electing child is receiving benefits under a consolidated award which are to be terminated because of his/her election of benefits in case B, action will be taken as provided in paragraph 15.29d, and the award in case B will be made subject to the offsetting of payments in case A using the remarks specified in subparagraph a(3) above.

42.28 EFFECT OF ELECTION ON OTHER PAYEES

The effect of a child's election of benefits upon the rates payable to the remaining beneficiaries within the same class [surviving spouse] and other children) in the same or another case is determinable by the effect of such election on the entitlement of the electing child to receive his/her share in the benefits payable to the other beneficiaries, as outlined in paragraph 42.23.

a. **Effect on [Surviving Spouse's] Entitlement.** Under VAR 1703(C), when a child elects to receive benefits in one case (B), the entitlement of a [surviving spouse] in the nonelected case (A) will be determined as if there were no such child.

[(1)] In DIC cases, the additional amount payable under section 411(b) will be determined as though the child (under age 18), electing benefits in another case, did not exist.

[(2)] A [surviving spouse's] award of pension will be subject to discontinuance when a lower income limitation becomes applicable or reduction because of her/his change in status, due to the (only) child electing benefits in another case.

b. **Effect on Other Children's Entitlement**

(1) When a child elects to receive benefits under one law and is not entitled to concurrent payment under any other law in the *same* case, the rates payable to the remaining beneficiaries within the class entitled under another law in *that* case will be determined as though the electing child was entitled to a share of their benefit; except that when the benefit elected is DEA, the rates payable to the remaining beneficiaries in the same case will be determined as though the electing child did not exist (VAR 1704(A)) (See also par. 10.15b re effect of election of DEA on other payees.)

(2) When a child elects to receive benefits in one case and is thereby not entitled to concurrent payment of benefits to which he/she would otherwise be entitled *in another case*, the rates payable to the remaining beneficiaries within the class in the other case will be determined as though the electing child did not exist (VAR 1703(C)). Any resulting increase to such other child or [surviving spouse] payee, or reduction or discontinuance of an award to a [surviving spouse] will be made effective the commencing date of the award to the electing child in the other case. (VAR 1659(B))

(3) In a DIC case, when there is an eligible [surviving spouse], a child's election of benefits in another case will have no effect on awards to other children who are over age 18.

42.29 REELECTIONS

Except when the benefit elected in one case is Dependents' Educational Assistance or restorative training, there is no limitation on the right of reelection. The receipt of compensation, pension or DIC in one case only suspends the right to benefits barred from current payment in the other case. (VAR 1703(B))

42.30 AWARD ACTIONS–OTHER PAYEES

a. **Notation in Remarks.** Appropriate notation will be included in "Remarks" with reference to the election by the child; e.g., "Benefits on account of child____(name)____ barred by election of____(benefit)____ in XC_____, _____(veteran's name)_____."

b. **Adjustment of Running Awards.** When payments in one case are to be adjusted because of an election by or on behalf of a child of benefits in another case as of the commencing date of the (elected) benefits to or for the child, simultaneous action should be taken consistent with VAR 1659 to avoid the creation of an overpayment in any running award. This may be accomplished as follows:

(1) **Reduction or Termination of [Surviving Spouse's] Award.** When the [surviving spouse] is receiving an additional amount on account of a child in her/his custody or is receiving payments of pension, to which she/he would not be entitled based on the applicable income limitation if there were not a child in that case (VAR 1703 (C)):

(a) The [surviving spouse's] award may be reduced or terminated (under reason code 11 or 30, as applicable) as of the 1st day of the month following the month in which the action is taken. VA Form 21-8046 may be used as a stop-award notice.

(b) The award to the electing child, in the other case, will then authorize the difference between the monthly amount otherwise payable in that case and the monthly rate paid the [surviving spouse] from the commencing date of benefits to the child through the date of last payment to the [surviving spouse] (par. 42.27a(3)).

(2) **Increase in [Surviving Spouse's] Award.** When the [surviving spouse] is receiving a reduced share because of an apportionment of her/his award for the child electing benefits in another case:

(a) The apportioned award to or for the child should be terminated (under reason code 30) by VA Form 21-8046, effective as of the 1st day of the following month.

(b) The [surviving spouse's] award will then be amended (under reason code 27) to authorize the increased rate as of the commencing date of benefits to or for the child in the other case.

(c) The award of the (elected) benefit to or for the child from that date to the end of the current month will authorize the available difference between the monthly rate otherwise payable and the rate paid to or for the child under the terminated award during that period (par. 42.27a(3)).

(3) **Increase in Another Child's Award**

(a) Separate awards to children entitled to increased rate(s) because of a child electing benefits in another case, will be amended to authorize the increased rate(s) effective the commencing date of the award to or for the electing child in the other case.

(b) The award to or for the electing child in the first case should be terminated by VA Form 21-8046 (under reason code 30).

(c) The child's award of the elected benefit in the other case will then be made to authorize the available difference between the monthly rate(s) otherwise payable for the elected benefit and the rate paid to or for the child under the terminated award, as provided above. (See par. 42.27c re adjustment of consolidated award.)

Example: Veteran N (Pay Grade E4) died October 10, [1971], leaving widow and two children, Jane and David. Jane is in the custody of her stepfather, Veteran S. Payments are being made as follows:

Total DIC payable [($334 plus 2 x $35)]	[$404]
Widow's individual share	[308]
David's share added to widow's share	[48]
Monthly rate to widow	[356]
Jane's apportioned share	[48]

Jane's stepfather S, dies July 25, [1979], leaving Jane as sole survivor. Jane, pursuant to election requirement, elects the greater benefit [($150)] DIC in the S case. Claim and election received in August and award action taken September 5, [1979.]

(1) Jane's apportioned award in the N case would be terminated effective October 1, [1979], and the widow's award amended, effective October 1, [1979], to pay the rate of [$366] as only one child (David) would be counted in that case.

(2) In the S case, Jane would be awarded the differential rate of [$102 ($150-48)] from July 1, [1979] and the full rate of [$150] from October 1, [1979.]

SUBCHAPTER [V]. SOCIAL SECURITY BENEFITS UNDER SECTION 217(b), SOCIAL SECURITY ACT

42.31 SCOPE

This subchapter is only applicable to cases of veteran's *death prior to July 27, 1954*, when death compensation, pension or DIC is payable based on the death of a veteran who:

a. Had active service on and after September 16, 1940, and prior to July 25, 1947;

b. Was separated from service prior to July 27, 1951, and

c. Died within 3 years after separation from service (i.e., before July 27, 1954).

42.32 GENERAL INFORMATION

Some [surviving spouses], dependent parents and children of World War II veterans may still be receiving social security benefits based on the deemed insured status provisions of section 217(b) of the Social Security Act. Other [surviving spouses] (having no child(ren)) are potentially eligible for this benefit at age 60. It is important, therefore, that VA claimants in this category understand that if the VA claim is approved:

[a.] Current and future rights to that social security benefit will be lost, since that benefit may not be paid for any period during which death compensation, pension or DIC is payable to *any* dependent of the veteran.

[b.] Furthermore, any such payments made not exceeding the amount of any death compensation, pension or DIC awarded to or for the *same* person, for the same periods, must be offset. (VAR 1709)

42.33 FORMS USED FOR EXCHANGE OF INFORMATION

The following forms will be used for the exchange of information between the Social Security Administration and the VA:

Form SSA 650, Request for Certification of VA Payments.

Form SSA 651, Certification of Award of Benefits Under Section 217(b) of the Social Security Act, as Amended.
VA Form 21-6877, Notice of Gratuitous Death Awards.
VA Form 21-6899, Request for Benefit Data.

42.34 USE OF FORM SSA 650

a. **Action by Social Security Administration.** Form SSA 650 will be used by the Social Security Administration, upon receipt of a claim for social security benefits, to ascertain whether death compensation, pension or DIC has been awarded by the VA. Two copies will be forwarded to the VA regional office having jurisdiction, with the upper half of the form completed.

(1) If no reply is furnished by the VA office within 60 days, or the reply is made that no claim has been filed with the VA, that a claim is pending, or that all claims have been disallowed, an award of survivors insurance may be certified for payment.

(2) No followup on the form will be made prior to certification.

b. **Action by VA.** Upon receipt of Form SSA 650, the Adjudicator will enter on the lower half of the form, in duplicate, the status of *any* claim for death compensation, pension or DIC, or a statement under "Remarks" showing that no such claim has been filed.

(1) If benefits have been awarded, the name, address and relationship of the beneficiary will be entered. It will not be necessary to show that payments have been awarded to more than one person.

(2) The form will be signed by an authorizer for the Adjudication Officer and the original will be returned to the originating Social Security Administration office. The duplicate, signed (initialed) and dated by the preparer, will be filed in the claims folder.

42.35 INITIAL ACTION UPON RECEIPT OF CLAIM FOR VA BENEFITS

a. **Review of Claims Folder.** When a claim is received in any case in which all of the conditions specified in paragraph 42.31 are present or if the claims folder contains either Form SSA 650 or SSA 651, indicating that a claim has been filed or an award under section 217(b) has been made by the Social Security Administration, VA Form 21-6899 will be used to obtain the benefit data necessary to inform the [surviving spouse], dependent parent or child before entitlement to VA benefits is determined, as pointed out in paragraph 42.32.

(1) VA Form 21-6899 will be sent, in duplicate, to the appropriate Social Security Administration Program Service Center (par. 13.08a).

(2) A 30-day control will be maintained for followup.

b. **Simultaneous Development.** Any required development will also be undertaken for the determination of entitlement to VA benefits. If no development is required, the claimant will be informed of the possible delay (par. 4.03b).

c. **Return of VA Form 21-6899.** Upon receipt of VA Form 21-6899 completed by the Social Security Administration Program Service Center, completion of any other development, and determination of entitlement to VA benefits, the adjudicator will furnish complete information to the claimant.

42.36 NOTICE TO CLAIMANT AND DISALLOWANCE PENDING REPLY

a. **Notice.** Information to the claimant will include a comparison of VA and social security benefits, specifying any social security benefits (listed on VA Form 21-6899 under the column headed "Exclusive of 217(b)") which could be paid concurrently with VA benefits. If it is apparently advantageous to continue the section 217(b) benefits, the claimant will be advised that the VA benefits may be payable at any time in the future (whereas, if the social security benefit is terminated for payment of VA benefits, it may never be resumed thereafter).

b. **Disallowance Action.** Pending the claimant's decision, the claim will be disallowed under reason code 20, "Claim withdrawn, because of receipt of SSA benefits under Sec. 217(b)." The disallowance will be prepared and processed "For Record Purpose" in accordance with paragraph 16.05b.

(1) The claimant will not be advised of this disallowance but only informed that in the absence of a reply it will be assumed that she/he desires to withdraw the claim for VA benefits.

(2) Further action will not be required in the absence of a reply or further communication from the claimant. A control will not be required.

42.37 AWARD ACTION

a. **Awards to Other Persons.** When the award of death compensation, pension or DIC is in favor of any person other than the person in receipt of the social security benefit, the commencing date of such award will be determined and payments authorized without regard to the provisions of section 217(b)(1) of the Social Security Act (although the gratuitous social security benefit to the other person(s) will be thereby terminated).

b. **Award to Same Person.** When the award of death compensation, pension or DIC is in favor of the same person to whom the social security benefit was awarded, the adjudicator will prepare the award in the usual manner except that the commencing date will be left blank.

(1) The following statement will be entered under "Remarks":

"Subject to possible adjustment to an earlier commencing date under Sec. 217(b) of the SS Act."

(2) The authorizer will insert the date of approval of the award as the commencing date.

(3) In fiduciary cases, the VA Form 21-592 will explain the circumstances under which the award is to be made upon certification of the fiduciary.

c. **Notice to Payee.** In notifying a payee of the approval of an award under the foregoing subparagraph b, the following information will be included:

"The commencing date of this award may be adjusted to an earlier date upon receipt of information which is being obtained by this office. No further action on your part is required. You will be notified if adjustment to an earlier commencing date is approved."

42.38 USE OF VA FORM 21-6877 FOLLOWING AWARD ACTION

a. **Notice to Social Security Administration.** At the time of an award under either paragraph 42.37a or b, VA Form 21-6877 will be sent, in duplicate, to the appropriate Social Security Administration Program Service Center, with the upper part fully completed. When the award was made under paragraph 42.37b, a 30-day control will be maintained for followup action.

b. **Return to VA.** Upon return of the VA Form 21-6877 with section II completed, showing that no award of benefits under section 217(b)(1) has been made to the beneficiary awarded VA benefits under paragraph 42.37a, the form will be filed without further action. When the VA award was made under paragraph 42.37b, the procedure outlined below will be followed.

42.39 ADJUSTMENT OF AWARDS

a. **Certification by Social Security Administration of VA Form 21-6877.** Monthly payments of survivor insurance benefits are made retroactively and not prospectively.

(1) The "termination date" will customarily represent the month in which the termination action was accomplished. For example, the entry of "October 1963" as the termination date means that payments were made through the month of October 1963.

(2) Similarly the month entered under "beginning date" will be accepted as meaning that payment was made for that month. The Social Security Administration will enter, under "beginning date," the same month and year shown by the VA as the "earliest date of entitlement" or the first month thereafter that the social security entitlement began for that beneficiary.

(3) It is the responsibility of that agency to recover such erroneous payments not offset by the VA.

b. **Amendment of Awards.** If it is determined that there is any additional amount of death compensation, pension or DIC payable, the award will be amended to commence effective the date provided by the applicable law.

(1) The difference between the monthly rate of the VA and social security benefits will be shown as the monthly rate payable for all periods from the earliest effective date under the applicable VA law, to the date the social security benefits under section 217(b) were terminated, and the full monthly VA rate(s) thereafter.

(2) The entries in "Prior Net Award Data" [(item 11 on VA Form 21-6798d)] will be completed by the adjudicator to show "none" as the monthly payment from the applicable commencing date, followed by the actual prior net award data for payments made under the initial award.

(3) A notation will be made in remarks: "To authorize payment from date of entitlement, subject to $_____ paid under Sec. 217(b)."

c. **Offset Equals VA Adjustment.** If it is determined that the social security benefit under section 217(b) equals or exceeds the VA benefit accrued prior to the date of approval of the initial award, and the offset therefore equals the accrued, VA Form 21-6877 will be filed without need for further award action. A notation to that effect will be entered on the file copy of the award prepared under paragraph 42.37b.

d. **Notice to Payee.** Notice of the action taken will be furnished to the payee and other persons in interest.

42.40 SECTION 217(b) BENEFITS PAID TO SURVIVING SPOUSE FOR CHILDREN

When social security benefits are payable to a surviving spouse and minor children, these amounts are paid separately. The award on behalf of a minor child is customarily made to the surviving spouse "for the use of" the child. When VA Form 21-6877 is dispatched notifying the Social Security Administration that an award of VA benefits has been made in favor of a surviving spouse the Social Security Administration certification will include a report of amounts paid "for the use of" a minor child or children of the veteran.

a. **VA Award to Surviving Spouse.** When social security payments have been made to the surviving spouse "for the use of" a child or children for whom VA benefits are included in the surviving spouse's, such amounts will be included in computing the offset against the award.

b. **VA Award to or for a Child.** When a VA award is made to or for a child, only those amounts paid under section 217(b) to any person "for the use of" that child will be included in the amount to be offset.

42.41 VA AWARD MADE PRIOR TO RECEIPT OF FORM SSA 651

Under certain circumstances an award of death compensation, pension or DIC may have been approved prior to receipt of notice that an award of benefits has been certified under section 217(b) to the same person. In such cases, when Form SSA 651 is received showing this, action will be taken to suspend payments of VA benefits. This action will be taken without regard to the fact that the initial award may have been approved prior to enactment of Public Law 81-734.

a. VA Form 21-6877 will be executed and dispatched as provided in paragraph 42.38.

b. Upon receipt of the necessary information from the Social Security Administration Program Service Center certifying the benefits paid under section 217(b) and termination thereof, appropriate action will be taken as provided in paragraph 42.39.

SUBCHAPTER VI—MISCELLANEOUS ELECTIONS

42.42 ELECTIONS OF DEA BENEFITS (See par. 10.16)

[42.43] PAYMENT OF DIC AT PENSION RATES

Pursuant to 38 U.S.C. 412(b) the payment of DIC to a surviving spouse at pension rate is permissible when the surviving spouse is receiving additional benefits for children and the usual DIC rate payable would be less than the surviving spouse's entitlement to pension benefits. In certain DIC cases it is possible that the Improved pension rate based upon the surviving spouse's income for VA purposes would be greater than the surviving spouse's entitlement to DIC benefits. Therefore, these provisions of the law would be for application and the benefit payable will be DIC at the Improved Death Pension rate (VA Regulation 1702(F)).

a. **Separate Claim Not Required.** A claim for increased benefits will not be required. Any case encountered in which the Improved Death Pension rate may be greater than the DIC payable will be considered for the increased benefit upon the surviving spouse establishing entitlement.

b. **Consideration of Children's Dependency.** A child over age 18 and under 23, attending school, and a child over 18 and helpless, will be included in computing the applicable pension rate to the surviving spouse, notwithstanding that DIC is payable to the child in the additional amount specifically authorized for a school or helpless child. *NOTE: The child's DIC would be countable as income for purposes of determining the Improved Pension rate payable.*

c. **Notice to Claimant and Development.** When a surviving spouse files a claim or a case is encountered in which it appears the claimant may be entitled to this increased benefit, they will be informed of the right to payment at the death

best copy available

pension rate. The surviving spouse will be requested to furnish evidence of income and net worth for appropriate periods for himself/herself and the veteran's children if not already of record. Such simultaneous development as necessary will be undertaken to determine the maximum benefit payable in original claims for death benefits whenever it appears probable that the death pension rate may be the greater benefit.

d. **Award Action.** The rate payable will be the Improved Death Pension or regular DIC rate, whichever is the greater.

(1) Awards will be adjusted retroactively, currently, or prospectively, as appropriate, in accordance with the facts in each case.

(2) Adjustments will be made by reason of changes in income or net worth, dependency of children, statutory changes in the regular DIC or Improved Death Pension rates, or any other reason(s) affecting the benefit payable, in order that the beneficiary will at all times receive the greater benefit. Claimants will be advised accordingly.

(3) The effective date of any increase payable to a surviving spouse already in receipt of DIC will be in accordance with VAR 1114(A), if evidence of entitlement is of record or is received within 1 year from date of request, but may never be earlier than January 1, 1979.

(4) Whenever the Improved Death Pension rate is greater than the DIC rate payable, the award will be prepared at the Improved Pension rate with the appropriate DIC entitlement code and special law code 10 for those periods when pension is the greater benefit.

NOTE: Cases in this category will be selected for regional office review as part of IQ processing.

(a) Reason code 30 will be entered on any award line authorizing a change from the regular DIC rate to the death pension rate and vice versa.

(b) When the award to a surviving spouse receiving DIC at death pension rates is to be apportioned for a child or children not in custody, the child(ren) will receive the greater of either the DIC apportioned share or the Improved Pension rate to which they would be entitled.]

CHAPTER 43. BURIAL/PLOT-INTERMENT ALLOWANCE

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CHAPTER 43. BURIAL/PLOT-INTERMENT ALLOWANCE

43.01 INTRODUCTION

This chapter contains procedures for processing claims for burial and related benefits as prescribed by 38 U.S.C. ch. 23 and [38 CFR 3.1600] series.

a. **Burial Benefits.** Includes all payments which may be made for burial, funeral, plot or interment and transportation expenses.

b. **Burial Allowance.** The statutory amount which may be authorized for burial and funeral expenses (M21-1, app. B, sec. XV). "Basic" burial allowance will be the nonservice-connected amount.

c. **DIC [(Dependency and Indemnity Compensation)] Under 38 U.S.C. 410(b).** An award of DIC under 38 U.S.C. 410(b) (par. 39.16) does not confer entitlement to service-connected burial benefits.

d. **Philippine Cases (Commonwealth Army and Recognized Guerilla Service).** The allowances payable are limited to a rate in pesos equivalent to one-half the statutory rate. (See also par. 43.23e(2)(b)).

43.02 DEFINITIONS

For the purposes of this chapter, the terms used are defined as follows:

a. **Burial.** For the purposes of payment of burial benefits, "burial" embraces all of the various recognized methods of disposing of bodies of deceased persons.

(1) Cremation is a "burial" within the meaning of the statute, regardless of what is done with the ashes, and payment is warranted for the expenses attendant thereto, including the cost of the burial urn.

(2) When the veteran's body is turned over to a medical school for scientific purposes and for subsequent burial under any of the various recognized methods, including cremation, there has been a "burial" and burial benefits may be paid.

(3) Burial at sea is also included but reimbursement is limited to costs of services and items furnished up to the point at which the body has been committed to the sea. (See par. 43.11c.)

b. **Plot or Interment Allowance**

(1) The term "plot" or "burial plot" means the final disposal site of the remains and includes a grave, mausoleum vault, columbarium niche, or other similar place.

(2) The term "interment" is synonymous with "burial" meaning any of the usual methods of disposition of remains. An unpaid bill for a plot will take precedence in payment of the plot-interment allowance over an unpaid bill for other interment expenses.

(3) This allowance may not exceed

(a) The statutory amount for incurred expenses of interment or plot *AND* the interment or burial was not made in a national cemetery or other cemetery under the jurisdiction of the United States; or

(b) The statutory amount paid to a State or State agency or political subdivision, if a veteran died from nonservice-connected causes, and is buried (without charge for the cost of a plot or interment) in a State-owned cemetery, or section thereof, used solely for persons eligible for burial in a national cemetery. (M21-1, app. B., sec. XV)

c. Creditor

(1) The term "creditor" means the person or persons who furnished services or merchandise relating to the burial, funeral, transportation or plot (e.g., funeral director and cemetery owner), and to whom all or any portion of the bill remains unpaid.

(2) The "initial creditor" means the first one to perform a particular service. "Secondary creditor" means any subsequent creditor performing the same service. This situation would arise when one funeral home (initial creditor) receives the body and embalms it and then turns it over to a second funeral home (secondary) for burial. (See par. 43.07c.)

d. Prepaid Burial. "Prepaid burial" means any burial for which payment was made prior to death. Payment may be by one-time payment to the funeral home or other entity or by installment payment such as premiums, dues or assessments for a burial contract or policy. (See par. 43.20b.)

e. Transportation Costs

(1) When the veteran's death (service connected or nonservice-connected) occurs while en route for authorized examination, treatment or care, or while properly admitted to a VA medical center, domiciliary or nursing home under the direct jurisdiction of the VA, the cost of transporting the body to the place of burial may be authorized in addition to the service-connected or nonservice-connected burial allowance and plot-interment allowance.

(2) When death does not occur under the circumstances in subparagraph (1) above, transportation costs are payable for a veteran who is buried in a national cemetery and who either died of a service-connected condition or, at the time of death, had a service-connected condition for which he/she was receiving disability compensation or, but for the receipt of military retired pay or VA pension, would have been receiving disability compensation. (See par. 43.14.)

f. Headstones and Markers. Government headstones or markers may be furnished on request for any individual buried in a national or post cemetery and certain individuals eligible for burial in a national cemetery, but not buried there (see par. 43.26) or when a headstone or marker is not furnished, a reimbursement allowance may be made for a non-Government headstone or marker (or additional engraving) purchased for placement in a nonnational cemetery.

43.03 ELIGIBILITY

a. General. [Title 38, Code of Federal Regulations, section 3.1600] provides the basic requirements for entitlement to reimbursement for burial and funeral expenses as conditioned by the veteran's service and character of discharge, specifically listing certain persons not included.

b. Eligibility for Basic Burial Allowance. The deceased veteran must have been discharged or released from service under conditions other than dishonorable and must have either:

(1) Been in receipt of pension or compensation (or would have been in receipt of compensation but for the receipt of military retirement pay); or

(2) Had an original or reopened claim for pension or compensation pending and is found entitled from a date prior to date of death; or

(3) Died while traveling under prior authorization or while properly hospitalized. [(38 CFR 3.1605)]

[(4) If eligibility for the basic burial allowance is not established under the above provisions, eligibility may also be established if each of the following conditions is met:

(a) The veteran served during wartime or was released from active service for a disability incurred or aggravated in line of duty.

(b) The veteran's remains were held unclaimed by a State or political subdivision of a State.

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(c) There is no next of kin or other person claiming the body of the deceased veteran.

(d) There is not available from the deceased veteran's estate sufficient resources to defray the cost of the veteran's funeral and burial.

c. **Pending Claim for Pension or Compensation.** If an original or reopened claim for pension or compensation was pending at date of death under the criteria of paragraphs 37.04 and [56.23], the claim will be adjudicated in the same manner as for accrued benefits under 38 CFR 3.1000 without regard to whether a claim for accrued benefits has been made. The requirements of paragraphs 37.07 and [56.24], regarding evidence in file at date of death, will apply. When confirming evidence is required to permit adjudication establishing entitlement (par. 37.07b), it must be received within 1 year from the date it is requested; otherwise, the burial claim will be disallowed. *NOTE: This requirement does not affect or change the 2-year time limitation for filing claim for burial benefits.*

(1) When rating action is required for purposes of determining entitlement, the rating will be prepared as provided in paragraph [56.25], with the addition of reference to 38 CFR 3.1600(b)(2) in the heading: "FOR PURPOSE OF 38 U.S.C. 3021 AND 38 CFR 3.1600(b)(2)." If, at the time of preparation of the rating, no accrued claim has been filed within the 1-year time limitation, the heading will be "FOR PURPOSE OF 38 CFR 3.1600(b)(2) ONLY."

(2) When entitlement based on a pending claim can be established without rating action; e.g., pension claim–veteran age 65, the decision will be documented [on the award sheet.] The burial award or disallowance document will be annotated "Eligibility under 38 CFR 3.1600(b)(2) (is) (is not) established (rating dated _____.)/[(pending claim at date of death.)]

(3) The end product appropriate to the pending claim will be taken for the adjudicative action on that claim in addition to the end product for the burial claim.

d. **Retired Pay Cases.** A veteran having a compensable service-connected evaluation who has not elected compensation in lieu of retired pay will be considered to have been in receipt of compensation for purposes of eligibility to the basic burial allowance and the plot or interment allowance.

e. **Legal Impediments**

(1) The execution of a veteran as a lawful punishment for a crime does not of itself preclude payment of the statutory burial allowance.

(2) Title 38, Code of Federal Regulations, section 3.11 does not bar payment of the statutory burial allowance as reimbursement to a person who murders a veteran.

f. **Rejected Draftee or Member of the National Guard.** The prohibition against payment of burial benefits in 38 CFR 3.1600(e)(1) and (2) applies to the following unless the condition of death while properly hospitalized by the VA in 38 CFR 3.1605(c) is met regardless of whether the deceased was in receipt of compensation or pension:

(1) A recruit seeking enlistment in the Regular Army.

(2) A recruit seeking enlistment in a National Guard unit after it has become a part of the Army of the United States.

(3) A member of the National Guard up for examination to determine individual fitness for military service because the unit in which he or she was enlisted has been mustered into Federal service.

(4) A discharged or rejected draftee or selectee.

(a) Final acceptance into the Federal military service is the test in all cases and a person disqualified for Federal military service for any reason (e.g., rejection and discharge of such person by reason of dependency) is not entitled to the statutory burial benefits.

(b) When the service department certifies that there has been Federal active service, it should be accepted as the basis for adjudication of benefits, if the individual was, in fact, mustered into Federal service and in the absence of controverting evidence. But see 38 CFR 3.7(t) providing that certain individuals had active Federal service though not so regarded by the service departments. (See also Adm. Dec. 983.)

(c) The VA is bound by the certification of the service department as to the facts and circumstances of the alleged military service. However, the question of whether or not they constitute the requisite service for payment of the burial benefits is for VA determination. (38 CFR 3.1600(d))

g. **Service-Connected Burial Benefit**. Eligibility for the service-connected burial benefit is established only when the veteran dies of a service-connected disability. Cases in which eligibility to death benefits is established under 38 CFR 3.800 (38 U.S.C. 351) or under 38 U.S.C. 410(b) are not included, as death is not the result of a service-connected disability but the result of circumstances which only permit payment of service-connected death benefits. [If death is due solely to the paired nonservice-connected organ or extremity under 38 U.S.C. 360 with no contributory cause of the service-connected disability, entitlement to the service-connected burial benefit is not established.] Only the non-service-connected burial allowance, the plot-interment allowance and transportation expenses may be paid, in these cases, provided eligibility is established.

43.04 FORFEITURE OF RIGHTS; CLEARANCE OF PERSONS WHO RESIDED IN ENEMY TERRITORY

a. **General**. The provisions of 38 CFR 3.1609 will apply in any case in which it has been held that the veteran or the claimant has forfeited his or her rights to benefits. Claims involving this question will be handled as provided in chapter 20 of this manual.

b. **Veteran's Loyalty**. In the absence of a decision of forfeiture under 38 CFR 3.902 or 3.903 the veteran's loyalty clearance will not be required. (38 CFR 3.1609)

c. **Claimant's Loyalty**. Loyalty clearance will be necessary only when required by paragraphs 7.08 and 15.42 or when forfeiture may be declared under 38 CFR 3.902(d). The procedure outlined in paragraph 7.08b(3) will be followed in Philippine cases.

(1) Loyalty affidavits will not be requested when the claimant's formal loyalty clearance is already of record or when the claimant is a veteran's camp, veteran's service post, a corporation, administrator or executor of the estate.

(2) The award of the burial benefits, if otherwise in order, will not be delayed pending receipt of formal loyalty clearance in connection with claims for accrued benefits payable on the basis of relationship. (See pars. 37.35 and 37.44b.)

43.05 REQUIREMENTS FOR RATING

All applications for the burial benefits will be considered for the service-connected burial allowance under 38 U.S.C. 907, even though the claimant, creditor, friend, or relative has not placed in issue service connection for cause of death.

a. **Rating Format**. A death rating decision in the format specified in chapter 56, subchapter III, will be required to establish service connection for cause of death when there is no legal bar. (See par. [34.08] when referral for rating is not required.)

b. **Review of Evidence–Development**. Complete development will be undertaken if the evidence of record indicates that death may be service connected. (See par. [34.08] re requests for service records and denial without a rating decision.)

(1) If the cause or contributing cause of death is service connected or may have resulted from an established service-connected condition or service department records indicate the existence of the condition causing or contributing to the cause of death, the case will be referred to the rating board.

(2) In every case, the records will be carefully reviewed at a responsible adjudicative level to determine the possibility of entitlement to the service-connected benefit and whether referral for rating board consideration is required. If there is any cause shown which may indicate service-connected death, including a service-connected condition which may have contributed materially and substantially to the death, the case will be referred to the rating board. (See par. 34.06a.)

(a) To ensure consideration of the issue of contributory cause of death, the case will be referred to the rating board if the veteran has service connection for:

1. A cardiovascular condition.

2. A genitourinary condition.

3. Other involvement of a vital organ.

4. A chronic constitutional disease.

5. A disability ratable at 50 percent or more.

6. Any chronic disease listed under 38 CFR 3.309(a) (see par. 34.06). - chg. 443 chg. 477

(b) Minor service-connected disabilities of a static nature which do not affect a vital organ do not, as a general rule, play a part in hastening death from an unrelated disease. It is to be recognized, however, that these disabilities of low evaluation can increase in severity prior to and at time of death and may, as an active process, become a material factor in hastening death.

[c. **Death Within 5 Years of Separation From Service.** Refer each claim to the rating board if death occurred within 5 years of separation from military service unless death was due to homicide, execution for a crime, common accident, or disaster.]

43.06 CLAIMS

a. **Application**

(1) **Furnishing Applications.** Review of the claims folder for the purposes of preliminary actions, withholding period for the furnishing of claims (VA Form 21-530, Application for Burial Benefits) and related matters, are covered in paragraph 32.10.

(2) **Defective or Incomplete Applications.** These applications will be processed as outlined in paragraph 4.02 and as further provided in this chapter. Claims signed by mark but not witnessed in accordance with prescribed procedure may be perfected by the completion of VA Form 21-121, Application for Burial Allowance and Accrued Amounts, Payable As Reimbursement, by the claimant and properly witnessed.

b. **Proper Claimant—General.** Claim for the statutory allowance for burial, funeral and transportation expenses may be asserted by the persons enumerated in 38 CFR 3.1601(a), i.e., the creditor who provided services or furnished merchandise in connection with burial, funeral, transportation, plot or interment; by the person or persons whose personal funds were used to pay such expenses; or by the representative of the estate of the deceased veteran or claimant when the estate funds were used to pay the expenses, or they were prepaid by the veteran or claimant. (See also par. 43.07b.) However payment of the basic burial allowance based on indigent status can be made only to a funeral director who handled the arrangements.

(1) **Claim by Creditor.** An application of a firm or corporation must be executed in the full name of the firm or corporation and show the official position or connection with the firm or corporation of the individual signing the claim on its behalf; e.g., Stone Funeral Home, by John Doe, President.

(2) **Payment From Deceased's Joint Account.** When the claimant states that expenses were paid from a bank account held jointly with the deceased with right of survivorship, the bank account will be considered to have been the personal funds of the claimant. However, when evidence is conflicting, the claimant will be required to furnish a statement from an official of the bank covering the question at issue.

(3) **Loaned or Borrowed Funds.** If money was borrowed to pay the expenses, the money will be considered the personal funds of the person receiving the loan and his/her claim, and not the claim by the lender, will be recognized.

(4) **Claim by Representatives of Veteran's Estate.** A claim signed by one of the coexecutors of an estate will be acceptable. Any award, however should be prepared in favor of both executors. (Par. 43.08a)

(5) **Claim by Funeral Director for Basic Burial Allowance Based on Indigent Status**

(a) To claim burial allowance based on indigent status, the funeral director who handled the arrangements shall submit a signed VA Form 21-530, Application for Burial Benefits (pts. I and II completed), a certified copy of the veteran's death certificate, an itemized statement of charges and a written statement from the State or political subdivision of the State that authorized the funeral arrangements, signed by a responsible official.

(b) The statement shall certify that the State or the political subdivision of the State authorized the deceased veteran's funeral service, that there is no next of kin or other person claiming the deceased veteran's body and that there are not available sufficient resources in the veteran's estate to cover burial and funeral expenses.

(c) A claim filed by anyone else will be disallowed.

c. **Assignment of Claims.** Assignments of claims will not be recognized. If the creditor assigns the right to payment of the plot-interment or burial allowance to a casket company, creditor, collection agency or the like, the claimant will be informed that such assignment is void and that the proper claimant is the individual or firm who provided services. (See par. 43.02c.)

d. **Bankruptcy of Creditor.** If the creditor has gone into bankruptcy or a receiver has been appointed, claim will be entertained from the trustee in bankruptcy or the receiver upon receipt of certified copy of the court order of appointment. In such cases, the award will be prepared in favor of the creditor providing burial and funeral services or furnishing the plot.

e. **Sale of Accounts Receivable of a Bankrupt Creditor.** If the accounts receivable of a bankrupt creditor are sold, the individual who purchases such accounts pursuant to petition and court order will be the proper claimant, but an interest in accounts receivable not acquired by operation of law does not entitle the purchaser to reimbursement.

f. **Authentication**

(1) **Lack of Signature of Persons Authorizing Services.** If VA Form 21-530 is received from a creditor which does not contain the signature of the person authorizing the services, a copy will be made for the file and the original returned to the claimant with a request that it be signed by the person authorizing the services.

(2) **Authentication When Person Who Authorized Services Is Unavailable.** When the creditor is unable to locate the person who authorized the services, the claim may be authenticated by the administrator or executor of the veteran's estate, if any, or by any other person (preferably a relative) having knowledge of the transaction or who viewed the remains or attended the funeral. In the absence of any such person referred to herein, the statement of the creditor to that effect will be accepted.

(3) **Need for Followup To Insure Creditor Remains Unpaid.** When a claim initially or subsequently is properly authenticated, a current statement as to the status of the creditor's account will not be required in any instance, irrespective of the time elapsing prior to the award action, except when there is of record information of a nature to raise a reasonable doubt as to the propriety of awarding all or any part of the allowance to the claimant on the basis of the shown status of the account.

(4) **Authentication by Coroner Who Is Also a Creditor.** A claim authenticated by a coroner, who is also a creditor, is acceptable.

g. **Claim for Plot-Interment Allowance**

(1) When burial is not in a national cemetery or other cemetery under the jurisdiction of the United States and the employer has not paid or assumed the plot or interment expenses, in addition to persons for whom the basic burial allowance is payable, eligibility for the plot or interment allowance *only* exists when the veteran:

(a) Served during a period of war; or

(b) Was discharged from active duty for (or could have been discharged for) a disability incurred or aggravated in line of duty.

(2) When only payment of the plot or interment allowance may be made, use the 307 screen to disallow the basic burial allowance and pay the plot or interment allowance.

(3) A claim for the (nonservice-connected) burial allowance will be considered a claim for the plot-interment allowance unless it is indicated this expense was assumed by the veteran's employer, the deceased was buried in a national cemetery or other cemetery under the jurisdiction of the Federal Government, or that burial was without cost for plot or interment in a section of a State or State-owned cemetery used solely for burial of those persons otherwise eligible for burial in a national cemetery.

(a) If the information included in part II on the burial application indicates that burial was not in a State or federally-owned cemetery and that the cost of the plot has been paid in full, all or any part of the allowance may be applied for reimbursement of interment expense and, as such, included in the award to the funeral director. In this instance, except as provided below do not develop for the cost of the plot.

(b) If a balance of the plot-interment allowance is available after all creditors (including the funeral director) are satisfied, send VA Form 21-530 to the person who authorized the burial, or to the administrator of the estate or the person whose personal funds were used as payment on the expenses. (Also see par. 43.07 repayment of allowances.)

(4) **Who May Claim Plot-Interment Allowance.** Claims for the plot-interment allowance may be executed by the payment authorized to:

(a) The funeral director, if he/she provided for the plot or advanced funds to pay for it and if the bill or any balance is unpaid.

(b) The person or entity from whom the plot was purchased or who provided interment services if the bill is unpaid in whole or in part.

(c) The person or persons who paid the plot or interment expense out of his/her personal funds to the extent available after unpaid creditors are satisfied.

(d) State or State agencies or political subdivisions thereof if the veteran was buried without charge for the cost of a plot or interment in a cemetery or section of a cemetery, owned by the entity, and used solely for the interment of persons eligible for burial in a national cemetery.

(e) If there is a balance of the plot-interment allowance available after all unpaid creditors or persons whose personal funds were used are satisfied, the executor or administrator of the estate of the veteran or of the person who paid the plot or interment expense. If no executor or administrator has been appointed, a claim may be filed by a person acting for the estate who will make distribution under the existing laws of the State of the decedent's domicile.

(f) Each claimant must submit a separate application. For example, if both the funeral director and cemetery owner are unpaid, each must submit a separate VA Form 21-530 containing the signature of the person who authorized services.

[h.] **Claim for Service-Connected Benefit.** Any application for burial allowance will be considered as including a claim for the service-connected benefit under 38 U.S.C. 907, even though the claimant has not otherwise placed in issue service connection for the cause of death. See paragraph 43.05 for instructions regarding development and requirements for submission for rating decision.

[i. **Time Limits for Claims and Evidence.**

(1) Title 38 Code of Federal Regulations, section 3.1601(a) provides that all claims for reimbursement or direct payment of burial and funeral expenses (including plot or interment allowance) and transportation of the body must be filed within 2 years subsequent to the date of permanent burial or cremation of the veteran. (See also par. 43.07b re-priority of payments.)

(a) Section 1601(a) also provides that if the burial allowance was not payable because of the character of the veteran's discharge and after the veteran's death the discharge is upgraded so that burial allowance eligibility is established, burial benefits may be paid if a claim is received within 2 years from the date the discharge was upgraded.

(b) A General Counsel Opinion dated May 1, 1989, held that the 2–year limitation for filing burial benefit claims under 38 U.S.C. 904 does not apply to a service–connected burial benefits under 38 U.S.C. 907.

(c) Another General Counsel Opinion dated July 31, 1989, held that the 2–year limitation for filing a burial benefit claim under 38 U.S.C. 904 does not apply to claims for transporation allowance under 38 U.S.C. 908.]

(d) For groups whose service is recognized by the Department of Defense under Pub. L. 95–202, entitlement to VA benefits arose on November 23,1977, (the enactment date of the legislation). The General Counsel, in Precedent Opinion 18–89 issued October 6, 1989, determined that the date of burial will control entitlement to burial benefits (both type and amount). The date service of individuals in the Merchant Marine was recognized as military service, and the date of issuance of the individual's discharge, are not material.

[(2)] **Informal Claims**

(a) When an informal claim is timely filed, the application (VA Form 21–530) must be received within 1 year from the date it was transmitted to the claimant for completion of the claim. Title 38, Code of Federal Regulations, section 3.1601(b) provides, however, that if the claim is disallowed within the 2–year period from date of permanent burial or cremation because the evidence (including formal claim) was not received within 1 year from date of request, and a new claim (formal or informal) is filed within the initial 2–year period, notify the claimant of the evidence necessary to complete the claim. If such evidence is received within 1 year from the date of this notice, the burial allowance and plot–interment allowance will be awarded provided entitlement is otherwise established.

(b) Use the 209 screen to send a VA Form 21–530 to the claimant of the burial and/or plot–interment allowance. If any additional evidence is required, use the 206 screen to request necessary evidence.

[(3)] If claim is not filed during the lifetime of the funeral director who provided services and whose bill is unpaid, it may be asserted, within the statutory time limitation, by the person assuming distribution of the deceased funeral director's estate, upon claim therefor by such person and submission of the necessary evidence as stated in paragraph 43.08a.

[(4)] If a person whose personal funds were used to pay the expenses of burial, funeral, plot–interment and transportation dies before filing claim (formal or informal) for the statutory burial allowance, claim may be made, within the statutory time limitation, by the legal representative of his or her estate; i.e., the administrator, executor or the person who will make distribution of the estate under the intestacy laws of the State of the deceased person's domicile. (See par. 43.08b.)

[(5)] If the burial allowance is barred because of the character of discharge, (subsequently corrected to a discharge under conditions other than dishonorable), the 2–year period for claim will run from the date of correction of the discharge. (See par. 14.01g.)

[j.] **Claim After Temporary Burial.** The fact of temporary burial should be apparent at time of original burial. There are instances in which the original burial may subsequently be held to have been temporary in nature, such as a case in which the original interment was a pauper or one in which the body was required to be removed from a national cemetery because of erroneously authorized interment.

43.07 PAYMENT OF ALLOWANCES

a. Amount Payable

(1) The amount payable for the service–connected or nonservice–connected burial must not exceed either the statutory limits or the amount paid by the claimant.

(2) The amount payable for the basic burial allowance based on indigent status shall not exceed the lesser of the amount of the statutory burial allowance or the actual burial and funeral expenses after excluding any amount paid by a State or political subdivision of a State. See paragraph 43.06b for evidence needed to pay a basic burial allowance claim based on indigent status.

(3) The amount payable for plot–interment allowance is to be determined on the basis of the statement of account submitted but may not exceed the maximum prescribed by law (see par. 43.09a(1)). If the plot includes more than one gravesite, the cost of the veteran's

grave may be determined by dividing the total cost by the number of graves in the plot. The payment for the plot should not exceed the proportionate amount for the veteran's gravesite.

(4) The amount payable to State-owned cemeteries if burial was without charge for plot or interment in a cemetery or section thereof used solely for persons eligible for burial in a national cemetery 38 CFR 3.1604(d) is the maximum prescribed by law.

(5) If service connection for the cause of death is established after the plot-interment allowance has been paid to a person, persons, firm or State agency not entitled to the burial allowance, an overpayment will not be created to recover the plot-interment allowance already paid. The claimant or claimants entitled to the burial allowance will be awarded the available difference subject to the maximum. In such cases, a dictated letter will be required to inform the claimant(s) of the action taken.

b. **Priority of Payments.** Upon proper claim therefor:

(1) **General**

(a) If two or more persons used their personal funds, [divide] any allowance payable [ ] among such persons in accordance with the proportionate share paid by each, unless waiver is executed in favor of one such persons by the other person or persons involved. [Do not allow] the person in whose favor payment is waived [ ] a sum greater than that which was paid him/her.

(b) If part payment of burial, funeral and transportation expenses is made from funds of the deceased veteran, or prepaid by him/her prior to death, and the balance of the expenses is paid from the personal funds of a relative or friend, the claim by such relative or friend will take priority over any claim by the estate. (See par. 43.08a.)

(c) If all expenses have been paid by the veteran's estate, the award may be made to the veteran's estate to the extent entitlement is established. In those cases in which the veteran prepaid his/her own funeral expenses, it will be considered that funds of his/her estate were used.

(2) **In Cases of Nonservice-Connected Death.** When there are separate claimants for burial and plot allowance and both benefits are payable:

(a) **All Expenses Paid**. If both the funeral expense and the cost of the burial plot are paid, the burial allowance will be awarded to the person or persons paying such expense and the plot allowance to the person or persons who paid that cost.

(b) **Both Funeral and Plot Unpaid**. If both the funeral expense and the cost of the cemetery plot are unpaid, the funeral director will be paid the burial allowance and the cemetery owner will be paid the plot allowance. Since burial and interment are synonymous:

1. If a portion of the [ ] plot-interment allowance is available after payment to the cemetery owner, the balance may be awarded to the funeral director to the extent of his/her unpaid bill.

2. If a portion of the [basic] burial allowance is available after payment to the funeral director, it may be paid to the cemetery owner to the extent he or she establishes *interment* charges in excess of the [ ] plot-interment allowance. It cannot be applied to unpaid *plot* charges in excess of [ ] as this is a statutory limitation.

3. If after payment of the funeral and plot expenses, there is a balance remaining from the [basic] burial allowance (or the [ ] plot-interment allowance), it may be paid as reimbursement to the person or persons who paid such expenses in an amount proportionate to the payment each made.

(c) **Funeral Unpaid–Plot Paid**. If the funeral expenses are unpaid, but the cost of the cemetery plot has been paid, the funeral director will be paid the [basic] burial allowance and, to the extent he or she establishes interment charges in excess of the basic burial allowance, that part or all of the [ ] plot-interment allowance. Any remaining balance will be divided between the persons who bore the expense in an amount proportionate to the payment each made toward such expense.

(d) **Funeral Paid–Plot Unpaid**. If the funeral expenses have been paid, but the charges for the cemetery plot are unpaid, the plot allowance and that part of the basic burial allowance which can be established as an unpaid interment charge furnished by the cemetery owner will be paid the cemetery owner as creditor. Any balance of the burial allowance plus any balance of the plot-interment allowance payable as interment expense will be divided between the persons who paid the funeral expense in an amount proportionate to the payment each made toward such expenses.

[(e) **Only Plot-Interment Allowance Payable**. If only the plot-interment allowance is payable, that benefit will be paid under the criteria provided in paragraph 43.06g(3)(a) and the above provisions depending upon whether plot costs have or have not been paid.]

c. **Claim by Two or More Creditors for the Same Benefit**

(1) When two or more creditors apply for the same allowance, burial allowance or plot-interment allowance, the claim of the initial creditor will take priority. (See par. 43.02c.)

(2) Generally, a claim for the statutory burial allowance asserted only by a "secondary" funeral director whose name is not shown on the death certificate may, if otherwise in order, be approved, if accompanied by a statement or other evidence of payment by the secondary funeral director of the initial funeral director's bill, or in any case when the items and/or services appearing on the supporting statement of account or the *total* amount shown thereon indicate that the initial services are included. When evidence of record indicates the initial funeral director's bill is unpaid or claims are filed by both the initial and secondary funeral directors, the rules governing the priority of payment set forth in subparagraph (1) above are for application.

d. **Payment for "Initial Services" Without Regard to "Secondary Services."** Generally, the same person authorizes both the initial and secondary expenses and, as a consequence, is responsible for the payment thereof. Accordingly, a claim filed for reimbursement based on the use of personal or estate funds, supported by a receipted statement of account of the initial funeral director in the amount shown on the claim, will be approved, if otherwise in order, regardless of the fact that the body was buried at a place other than the place of death and such claim is not supported by evidence to indicate that payment has been made to any secondary funeral director for expenses incurred.

e. **Services [Provided] at Different Points.** If services are [provided] by different creditors at two or more points, the following conditions will govern priority of payment:

Initial services [provided] (usually place of death)	Secondary services [provided] (usually place of burial)	Order of precedence to be followed in adjudication
Unpaid	Unpaid	Apply burial benefits on initial services and balance, if any, on secondary services.
Paid	Unpaid	Apply burial benefits on secondary services and balance, if any, on initial services.
Unpaid	Paid	Apply burial benefits on initial services and balance, if any, on secondary services.
Paid	Paid	Apply burial benefits on initial services and balance, if any, on secondary services.
Partially paid	Unpaid	Apply burial benefits on unpaid initial services and balance, if any, on secondary services.
Partially paid	Partially paid	Apply burial benefits on unpaid initial services and balance, if any, on unpaid secondary services.
Unpaid	Partially paid	Apply burial benefits on initial services and balance, if any, on unpaid secondary services.

43.08 PAYMENT TO AN ESTATE

a. **Payment to Administrator or Executor of Deceased Veteran's Estate.** When the burial expenses (including the cost of the burial plot) have been paid from the funds of the deceased veteran's estate, or prepaid by him/her prior to death, payment will be made to the administrator or executor of the estate upon timely claim therefor on VA Form 21-530. The deceased veteran's estate may also be paid limited reimbursement for expenses paid after the veteran's death for a non-Government headstone, marker, or engraving on behalf of the deceased. However, if only partial payment has been made from the funds of the deceased, and the balance is paid from the personal funds of a relative or other person, the claim by such other person will take priority over any claim by the estate.

(1) Claim must be supported by a copy of the letters of administration or letters testamentary certified over the signature and seal of the appointing court.

(2) If, prior to approval of an award, the VA receives notice that the estate has been closed, a certified copy of the discharge of the fiduciary and the court order of distribution should be obtained and payment made to the person or persons as set forth therein.

(3) If there are coadministrators or coexecutors, the burial award must be prepared in their joint names. (See also par. 43.06b(4).)

(4) If no administrator or executor has been appointed, claim may be filed by a person acting for the estate who will make distribution under the existing laws of the State of the decedent's domicile. (See also subpar. c.)

b. **Payment to Administrator or Executor of Deceased Claimant's Estate**

(1) When a claim has been timely made but, because of the death of the claimant whose personal funds were used to pay the expenses of burial, adjudication is not completed or check is not issued, payment will be made, if otherwise in order, to the administrator or executor of the claimant's estate.

(a) A claim filed on VA Form 21-121 will be accepted for this purpose if a formal claim on the prescribed form was previously filed by the deceased claimant.

(b) If only an informal claim and no formal claim was filed by the deceased claimant, the administrator or executor will be required to complete VA Form 21-530 and furnish the supporting evidence as stated in the foregoing subparagraph.

(2) When estate funds were used to pay the expenses of the veteran's burial, funeral, plot-interment and transportation, reimbursement may be made to the estate, regardless of whether the person whose estate bore these expenses predeceased the veteran or was deceased at the time the expenses were incurred or paid, or burial of the veteran was effected.

c. **Payment Under Intestacy Laws**. If no administrator or executor was appointed for the estate of the deceased veteran or claimant, distribution will be made under the intestacy laws of the State of his or her legal domicile.

(1) Claim may be filed on VA Form 21-609, Application for Amounts Due Estates of Persons Entitled to Benefits, by someone acting for the estate.

(2) After a determination has been made, with due regard to exemptions and allowances, the order of payment of debts, and heirs, each person found to be entitled will be required to execute a claim on VA Form 21-121.

(3) When payment is to be made to heirs, the amount payable may be awarded to one heir upon the unconditional written consent of all other heirs (VAR 2601(B)(4)).

d. **Responsibility of [Finance] Activity**. If the check was not negotiated by the claimant, whether issued prior or subsequent to the claimant's death, settlement thereof is made by the [Finance] activity.

e. **Escheat**. In the absence of a statement from any public or private source that the burial allowance will escheat, no inquiry will be made as to the possibility of escheat.

43.09 STATEMENTS OF ACCOUNT AND RECEIPTED BILLS

a. **General**

(1) **Statement of Account**. The claim must be supported by a statement of account (preferably on the printed billhead of the funeral director or cemetery owner) showing the name of the deceased veteran for whom the services and merchandise was furnished, the nature and cost of the services and merchandise, all credits, and the amount of the unpaid balance, if any (VAR 2601(B)(1)).

(2) **Receipted Bills**. Receipted bills must show the name of the person who made payment in whole or in part when a claim for reimbursement is filed by such person. An affidavit or other statement by the claimant, purporting to show payments, is not acceptable in lieu of a receipt. A statement of account will be accepted if receipted in accordance with accepted practice, such as one initialed or [ ] rubber stamped. (See VAR 2601(B)(2).)

b. **Express and Railroad Receipts**. All receipts covering express charges or railroad fare should show the name of the person whose body was transported and the name of the person who paid the transportation charges. When it is not possible to establish direct identity by name of the deceased, indirect identification through the consideration of other factors will be permitted. (Also see par. 43.14d, charges for escort.)

c. **Bills or Receipts Not To Be Returned**. Bills or receipts submitted in support of a claim become a part of the claim and will not be returned for any reason.

43.10 DIFFERENCES IN AMOUNTS ON CLAIM AND SUPPORTING STATEMENT

a. **Credits**. Any credits shown on the creditor's supporting statement of account will be accepted as correctly reflecting the status of the account notwithstanding the fact that such credit is not shown on the VA Form 21-530. This is likewise applicable when a partial payment is shown on the claim of the creditor but is not shown on the supporting statement of account.

b. **Extra Items of Services**. When charges for items not ordinarily carried in a creditor's stock or for services performed by persons other than the creditor or his or her regular employees are listed on an unpaid bill supporting a claim for burial or plot/interment allowance, receipts therefor will not be required.

c. **Restatement of Claim To Include a Greater Amount**. When a charge has been previously agreed upon by the creditor and the person authorizing the services, the restatement of the claim for the burial or plot-interment allowance to include a greater charge for the same services or merchandise will not be favorably considered in the absence of clear and convincing evidence that the original agreement was erroneous.

43.11 DUPLICATE AND NONALLOWABLE ITEMS AND SERVICES

a. **Duplicate Items**. If a casket, clothing, etc., is furnished by the VA or other Federal agency and thereafter the family purchases another casket or different clothing, no part of the statutory burial allowance may be applied on the second casket or on different clothing. (See VAR 2608(B).) No question will be raised, however, as to the reason for the purchase or the disposition made of the initial casket, clothing, etc., inasmuch as this is a matter between the creditor and the person who authorized the services.

(1) The provisions of this paragraph do not apply to a claim for an accrued amount payable as reimbursement. (See par. 37.39.)

(2) Furthermore, they will not be construed to apply to additional (as distinguished from duplicate or substitute) services or supplies, including a concrete or steel burial vault used in place of the wooden shipping case, furnished at the request of relatives of the deceased or other interested persons.

b. **Nonallowable Items**. Although the cost of food and drink are nonallowable items of burial, funeral, and transportation expenses under VAR 2608, no inquiry will be made as to whether charges therefor are included, irrespective of the total amount of the creditor's unitemized supporting statement of account. The question of excluding these items of expense from the amount to be awarded will arise only when they are listed or appear on the statement of account.

c. **Memorial Services**. In certain instances, the body of a veteran may not be recovered or death may occur and burial be made at sea. As existing law provides for payment of the statutory burial allowances on the burial and funeral services and transportation of the body (including preparation of the body), no part of such allowance may be paid on expenses incurred for "memorial services."

d. **Monument or Marker**. The monetary allowance payable as reimbursement for the cost of a non-Government headstone or marker shall not be paid when a Government headstone or marker has been requested or issued under the provisions of VAR 631(A)(2) and (B).

43.12 BURIAL SERVICES FURNISHED BY THE VA

Burial services furnished by the VA are limited to unclaimed body cases and arrangements are made on an individual case basis. When death occurs in a VA medical center, that facility will automatically forward copies of VA Form 10-2065, Funeral Arrangements, and VA Form 60-2138, Order for Supplies or Services, with a copy of the death certificate for filing in the XC-folder. Therefore, requests for concluded hospital correspondence folder or information concerning burial services furnished by the VA will not be routinely made prior to taking burial award action. (Also see par. 43.14 re transportation charges and par. 43.22 re unclaimed bodies.)

43.13 NATIONAL CEMETERIES—CLERGY SERVICES

a. **When Payment for Clergy Services May Be Made.** In many instances when death occurs in a VA medical center and burial arrangements are made as provided in paragraph 43.22, the unclaimed body may be shipped for interment in a national cemetery. Certain of these national cemeteries do not have clergy attached for attendance at interment services. In those cases, if the services of a member of the clergy are not obtained by relatives of the deceased, if any, or cannot be obtained from the Department of Defense or from some other source without payment of a fee, the charge therefor, if any, may be paid by the VA from any remaining amount of the statutory allowance payable on burial and funeral expenses. (See also [38 CFR 3.1610].)

b. **Procedure for Filing Claim.** Claim may be filed on VA Form 21-530, [Application for Burial Benefits,] by the unpaid member of the clergy, or by the creditor or relative or friend who paid the cost of such services and should be supported by a statement of account or receipted bill (par. 43.09).

43.14 TRANSPORTATION IN ADDITION TO THE STATUTORY BURIAL ALLOWANCE

or the svc-connected allowance (TWS correction)

The cost of transportation of the body to the place of burial is payable, in addition to the nonservice-connected burial and plot allowances, [ ] when the veteran dies while hospitalized by the VA or while traveling under prior authorization at VA expense for examination, treatment or care as provided by [38 CFR 3.1605 and 3.1606]; or in addition to the [nonservice-connected burial allowance or the service-connected] burial allowance, as provided in subparagraph h below, when the veteran is buried in a national cemetery as provided by [38 CFR 3.1600 (g)].

a. **Payment for Transportation Cost Prior to Payment for Funeral Director's Services.** When reimbursement covering cost of actual transportation or removal of the body of the veteran (by common carrier, hearse or other private conveyance) is involved, the person who paid the cost of transportation will be reimbursed to the extent of the amount to be allowed thereon, even though the creditor has not been paid for costs of burial, funeral services, plot, or interment. This relates to those cases in which transportation is allowable in addition to the statutory allowance.

b. **Charge for Pickup of Remains.** Payment of the "charge for pickup of remains," as that term is used in [38 CFR 3.1606], is allowable on a round trip or flat-charge basis, subject to the requirement that this must not exceed the charges customarily made to the general public. (See subpar. f below.)

c. **"One Later Removal by Hearse to Place of Burial" Defined.** For the purpose of [38 CFR 1606(a)(7)] which permits payment of ". . .one later removal by hearse to place of burial," a lump-sum charge therefor will be approved irrespective of the fact that there was a stop at the home or church en route from the funeral parlor to the cemetery.

d. **Charges for Escort Accompanying Remains.** When the death of a veteran occurs while receiving properly authorized VA care and the body is shipped to the place of burial by rail, and the charge for transporting the body is the cost of two first-class tickets, an attendant or escort may be authorized to travel on one of the two fares required but not if a third fare is required for the escort.

(1) The cost or return fare for the attendant or escort is not a proper charge against the burial allowance (although it and the third fare charge, when required, may be payable out of accrued [Benefits] due as reimbursement (see par. 37.39e).

(2) It is not necessary that the body be shipped on a Government bill of lading.

e. **Partial Payment in Absence of Evidence Re Transportation Costs.** When the funeral director's supporting statement of account contains the item "hearse" or a synonymous term, but not specific charge therefor, the claimant will be requested to submit an itemized statement showing the charge for each removal and the points between which transportation was furnished.

(1) In any case in which the claimant is required to submit a breakdown of the charge for transportation of the body, the burial allowance should be awarded, without delay, on the basis of the other unquestioned items appearing on the

supporting statement of account. Any balance payable will, upon timely receipt of the requested additional evidence, then be paid on a supplemental award for nonservice-connected burial or service-connected burial, as appropriate. For example, when a charge for any item of transportation on an unpaid funeral director's supporting statement of account is questioned, the award of burial allowance may be authorized on the basis of the other unquestioned approvable items. The payee will be fully informed of the action taken and specifically informed as to the right to establish the propriety of the charge for the item questioned for supplemental award action.

(2) If basic eligibility for transportation payment exists and the statement of account shows excess costs if service connection for the cause of death has been established, but the bill is not itemized or, if itemized, does not show a charge for transportation, the full amount of the burial allowance will be awarded. The funeral director will be requested to furnish a statement as to whether a charge was made for transportation and, if so, an itemization of the amount charged. Upon receipt of the statement, the transportation charges, if any, in excess of the burial allowance will be paid, if otherwise in order.

f. Excessive Charges. [Title 38, Code of Federal Regulations, section 3.1606(b)] does not require nor intend that itemized charges made for transportation by hearse shall be routinely subjected to question.

(1) When a charge for transportation on an unpaid funeral director's supporting statement of account appears to be out of line, he or she will be requested to state whether the charge in question is in the same amount he or she makes to the general public for the same service, provided that such charge is not substantially inconsistent with that made by other funeral directors in that particular locality.

(2) It should be understood that air transportation may be authorized when deemed necessary or advantageous on the basis of urgency and funeral arrangement details, and, of course, on a cost basis. If air shipment is authorized, the usual airfreight charges will generally limit the maximum payable.

(3) When transporting by hearse is over a long distance and the services of a common carrier were readily available, the amount of payment for such transportation will be limited to the common carrier rates (including hearse charges to and from the common carrier terminals). Limitation of payment to the common carrier rates should be pursued only when it is apparent that a common carrier should have been used and would not have imposed any hardship on the family or caused undue delay of the funeral or burial.

g. Deaths in Nursing Homes. Nursing home care authorized under 38 U.S.C. 620 in a VA facility, constitutes hospitalization by the VA within the meaning of [38 CFR 3.1605]. In such case, the cost of transportation of the body may be paid in addition to the burial allowance.

h. Transportation to a National Cemetery for Burial Occurring After October 1, 1976. If transportation costs are not payable under [38 CFR 3.1605], costs of transportation to a national cemetery may be payable as provided by [38 CFR 3.1600(g)] in addition to the basic nonservice-connected burial allowance or the service-connected burial allowance when the veteran dies of a service-connected condition or had a service-connected condition at the time of death for which he/she was receiving disability compensation or, but for the receipt of military retired pay or VA pension, would have been receiving disability compensation. Except as provided below, payment will be for the same items and in the same amounts as when death occurs while properly hospitalized under [38 CFR 3.1605].

NOTE: A determination of entitlement to service-connected disability payments or DIC payments under 38 U.S.C. 351 is not a grant of service connection for the disability or death. Therefore, such entitlement would not satisfy the criteria specified above for national cemetery transportation eligibility.

(1) Limitations on National Cemetery Transportation Payment

(a) When burial is in a national cemetery nearest the veteran's last place of residence, the *total* cost of all transportation charges as defined in [38 CFR 3.1606] are payable.

(b) When it is determined that the veteran was *NOT* buried in the *nearest* national cemetery (as defined below), payment may not exceed the amount which would have been payable for such burial. In these cases, the actual cost of transportation to the place of burial must be established by the claimant in the normal manner. Additional development will be required to establish

the costs which would have been incurred to transport the veteran to the closer national cemetery with space available. The amount payable is the lesser of the two amounts.

(2) **Nearest National Cemetery** for the purpose of this law is:

(a) A cemetery under the direct jurisdiction of the VA [National] Cemetery System, or Arlington National Cemetery; and

(b) Which is the closest, geographically, to the veteran's last place of residence; and

(c) Where space in the cemetery is available, and the veteran is eligible for burial; or

(d) A national cemetery in which a burial space was reserved for the veteran (usually when there has been interment in that space of a dependent predeceasing the veteran) prior to death.

(3) **Place of Last Residence** is the place where the veteran lived at the time of death. It normally coincides with the legal domicile, but includes a temporary residence if more advantageous to the claimant. Development to ascertain or verify the place of last residence will generally not be necessary. Unless the claimant affirmatively shows it to be otherwise, the place of last residence will be accepted as:

(a) The home address (other than bank addresses, post office boxes, or fiduciaries) to which checks were being mailed, if the veteran was in receipt of VA benefits at the time of death; otherwise,

(b) The address shown as the residence of deceased on the death certificate.

(4) **Place of Death** is that place shown by the death certificate or other acceptable evidence of death.

(5) **Notice to Claimant**. Particular attention is to be given to furnishing a full explanation to the claimant when the payment authorized is for less than that claimed.

43.15 TAXES

Federal, State, county, or municipal taxes are a proper charge against the burial allowance or an accrued amount payable as reimbursement. In determining the additional amount of burial allowance payable under VAR 2605, Federal taxes on charges by a common carrier will be included as transportation. (VAR 2606(A)(6)).

43.16 DEATHS IN STATE SOLDIERS' HOMES

a. **Limitation on Amount Payable**. When death occurs in or while traveling to or from a State soldiers' home, transportation expenses are not payable as it does not constitute hospitalization within the meaning of VAR 2605.

b. **List of State Soldiers' Homes**. A list of the State soldiers' homes, in connection with which the VA pays only such Federal aid as is provided by law for the "maintenance" of veterans follows:

Veterans' Home and Medical Center
Yountville, California 94599

Colorado State Veterans' Center
Homelake, Colorado 81135

Veterans' Home and Hospital
Rocky Hill, Connecticut 06067

Georgia War Veterans' Nursing Home
Augusta, Georgia 30901

Georgia War Veterans' Home
Milledgeville, Georgia 31061

Idaho Veterans' Home
P.O. Box 7765
Boise, Idaho 83707

List of Soldiers' Homes–Continued

Illinois Veterans' Home
Quincy, Illinois 62301

Indiana State Soldiers' Home
Lafayette, Indiana 47901

Iowa Soldiers' Home
Marshalltown, Iowa 50158

Kansas Soldiers' Home
Fort Dodge, Kansas 67843

Louisiana War Veteran's Home
Jackson, Louisiana 70748

Soldiers' Home in Massachusetts
Chelsea, Massachusetts 02150

Soldiers' Home in Holyoke
Cherry Street
Holyoke, Massachusetts 01040

Michigan Veterans' Facility
Grand Rapids, Michigan 49505

Minnesota Veterans' Home
Minnehaha Avenue and 51st Street
Minneapolis, Minnesota 55417

State Federal Soldiers' Home of Missouri
St. James, Missouri 65559

Montana Soldiers' Home
Columbia Falls, Montana 59912

Nebraska Veterans' Home
Grand Island, Nebraska 68801

Nebraska Veterans' Home
Norfolk, Nebraska 68701

Western Nebraska Veterans' Facility
Scottsbluff, Nebraska 69361

New Hampshire Soldiers' Home
Tilton, New Hampshire 03276

New Jersey Home for Disabled Soldiers
Menlo Park
Edison, New Jersey 08817

Memorial Home for Disabled Veterans
Vineland, New Jersey 08360

New York State Home for Veterans and Dependents
Oxford, New York 13830

North Dakota Soldiers' Home
Lisbon, North Dakota 58054

Ohio Soldiers' and Sailors' Home
Sandusky, Ohio 44870

Oklahoma Veterans' Center
P.O. Box 489
Ardmore, Oklahoma 73401

Oklahoma Veterans' Center
P.O. Box 489
Clinton, Oklahoma 73601

Oklahoma Veterans' Center
P.O. Box 151
Norman, Oklahoma 73069

Oklahoma Veterans' Center
P.O. Box 200
Sulphur, Oklahoma 73086

Pennsylvania Soldiers' and Sailors Home
P.O. Box 6239
Erie, Pennsylvania 16512

Rhode Island Veterans' Home
Bristol, Rhode Island 02809

S.C. War Veterans' Pavilion
P.O. Box 489
Columbia, South Carolina 29201

South Dakota State Veterans' Home
Hot Springs, South Dakota 57747

Vermont Veterans' Home
325 North Street
Bennington, Vermont 05201

District of Columbia Veterans' Home
Box R
Occoquan, Virginia 22125

List of Soldiers' Homes–Continued

Washington Soldiers' Home and Colony
Orting, Washington 98360

Washington Veterans' Home
Retsil, Washington 95378

Wisconsin Veterans' Home
King, Wisconsin 54946

Wyoming Soldiers' and Sailors' Home
RFD #1
Buffalo, Wyoming 82834

43.17 DEATH BENEFITS PAID BY OTHER FEDERAL AGENCIES

a. **Railroad Retirement Board.** When payment of the death benefit provided by the Railroad Retirement Act is made to a designated beneficiary or to a surviving relative based upon relationship alone, it will not be considered in determining the amount of the statutory burial allowance (service-connected or non-service-connected) or the accrued amount payable by the VA.

(1) When there is no designated beneficiary or eligible relative, Railroad Retirement benefits are paid as reimbursement. The provisions of VAR 2604(B)(2) are normally satisfied in such cases because, in determining the total reimbursable burial expenses, the Railroad Retirement Board considers the total amount paid or payable by the VA. Their application requires an applicant to state whether a burial allowance application has been, or will be, filed with the VA and the amount of payment received or expected.

(2) In the adjudication of VA claims for burial benefits, it will not normally be necessary to make any inquiry of the RR Board.

(a) However, when there is no surviving spouse and the application indicates an amount has been or will be paid by the Railroad Retirement Board which, together with the amount payable by the VA, would result in payment in excess of the total burial expenses, the Railroad Retirement Board must be contacted.

(b) Award action will be withheld and an inquiry sent to the Railroad Retirement Board at the address set forth in paragraph 13.12b(1) requesting information as to whether death benefits were paid by that agency and, if so, to whom and in what amount. They should also be requested to state whether or not benefits were payable as reimbursement. (But see par. 37.45 re accrued benefits.)

b. **Social Security Administration**

(1) When the Social Security Administration is place on notice, either in a claim for the lump-sum death benefit or otherwise, that the *statutory burial allowance* has been paid or that a claim has been or will be filed with the VA, they will take into consideration, in determining the amount of lump-sum benefit payable, the total amount paid or payable by the VA.

(2) In the adjudication of claims for VA burial allowance, it is *not* necessary to make any inquiry of the Social Security Administration.

(3) When the maximum lump-sum benefit payable by SSA and VA burial benefits exceed the burial expenses, SSA will reduce the amount of their lump-sum benefit to take into account the VA allowance. Upon SSA inquiry in such cases, the amount of VA payment will be provided. In the event that there is actual evidence that the SSA lump-sum death benefit has been paid, the SSA will be notified of VA burial payment and that they may have overpaid the lump-sum death benefit.

c. **Service Department**

(1) **Death in Service.** No burial or plot interment allowance is payable by the VA in those cases in which death occurs in active service (VAR 2604(B)(3)).

(a) If a formal claim, VA Form 21-530, is filed, disallowance will be accomplished as provided in paragraph 43.23.

(b) The statement of account and any other material pertinent thereto (except VA Form 21-530) should be forwarded to the appropriate service department showing the rank, organization, and serial number of the deceased, if known, and the name and address of the claimant. The following is the official designation and location of the various service departments to which the material will be forwarded:

Branch of Service	Official Designation and Location
Air Force	U.S. Air Force Military Personnel Center (DPMCB) Randolph AFB, Texas 78148
Army	Director Casualty & Memorial Affairs (DAAG-CAC) U.S. Army Forrestal Building Washington, D.C. 20314
Coast Guard	Commandant (GPS 1/63) U.S. Coast Guard 400 7th Street, SW. Washington, D.C. 20590
Marine Corps	Commandant of the Marine Corps (MSPA-1) HQ, U.S. Marine Corps Washington, D.C. 20380
Navy	Chief of Naval Personnel Bureau of Naval Personnel (PERS-732) Washington, D.C. 20370
National Oceanic and Atmospheric Administration	Chief Commissioned Personnel Division (NC1) National Oceanic and Atmospheric Administration Rockville, Maryland 20852
Public Health Service	Director Commissioned Personnel Operations Division Public Health Service, HHS Parklawn Building 5600 Fishers Lane Rockville, Maryland 20857

(c) The claimant will be notifed of such action but will not be informed of the right of appeal.

(2) **Concurrent Benefits–Death After Discharge**. The service departments are authorized to pay the burial expenses of a person who is discharged *while* hospitalized at the expense of the U.S. Government (including VA medical centers) and who continues as such a patient until his or her death. (10 U.S.C. 1481) They are also authorized to reimburse individuals who paid such expenses (10 U.S.C.1482). The VA burial benefits are also available in these cases and it will be necessary for the nearest relative or person entitled to reimbursement *to elect* between the allowance payable by the service department (including payments for preparation of the body, casket, transportation, etc.) and the benefits payable by the VA, as only one benefit is payable.

(a) If the deceased was admitted to the hospital prior to separation from service and was not separated prior to death, the VA burial allowance *is not* payable and subparagraph (1) above applies.

(b) A veteran admitted to a VA medical center simultaneously with a discharge from service is not a person discharged "while a patient in" the medical center and payment by the service department is not authorized and the VA burial allowance may be payable.

(c) *When death occurs in a VA medical center*, the material extracted from the patient's correspondence folder should indicate whether or not any allowance was or will be made by the service department. If there is any doubt, correspondence to develop for payment to the service department will be directed to the appropriate address shown in subparagraph (1)(b) above, citing 10 U.S.C. 1481 and 1482.

d. **Federal Employees' Compensation**. If it is indicated that the deceased was a Federal employee whose death resulted from an injury or disability sustained in the performance of duty, the Office of Workers' Compensation Program, U.S. Department of Labor, Washington, D.C. 20211 will be contacted to determine whether burial allowance has been or will be made under the Federal Employees' Compensation Act. If so, the claim for VA burial allowance will be disallowed. (VAR 2604(B)) (For death from injury in private employment, see par. 43.19.)

e. **Employing Federal Agency–Death While in Authorized Travel Status**. As Executive Order 8557, issued September 30, 1940, under authority of Public Law 729, 79th Congress, makes no provisions for the employing agency to pay for secondary burial expenses incurred in the funeral and interment expenses in the case of a veteran who dies while in authorized Federal Government travel status as a civilian, the provisions of VAR 2604(B) do not bar the payment of the statutory burial allowance on such secondary burial expenses. However, the provisions of paragraph 43.11 relative to nonallowance for duplicate items and services are for application.

f. **Member of Congress--Death While Holding Office**. Payment of the VA burial benefits is barred under the provisions of VAR 2604(B) if a Member of Congress dies while holding office inasmuch as the Congress provides in each individual case for payment by the Government of the reasonable funeral, transportation and interment expenses.

g. **Department of Justice–Federal Prisoners**. The annual appropriation acts of the Department of Justice affecting Federal penal and correctional institutions make no provision for the payment by the Government of interment expenses (except for interment locally) or funeral services at the point to which a body is shipped. In such cases, the burial allowance may, if otherwise proper, be awarded on these secondary expenses.

h. **Reimbursement to Other Federal Agencies**. On occasion, an allowance is made on the burial, funeral and transportation expense of a deceased veteran by another Federal agency on the erroneous assumption that its appropriation is liable therefor. Upon discovery of such fact, the agency may seek reimbursement from the VA to the extent of the burial allowance. Cases of this nature arising in a regional office will be *temporarily* transferred to WRO (Washington, D.C., Regional Office) for processing, citing "M21-1, par. 2[illegible]c" as authority. WRO action will be as follows:

(1) When such agency executes and submits SF 1080, [ ] Voucher for Transfer Between Appropriations and/or Funds, a formal claim on VA Form 21-530 will not be required.

(2) If otherwise proper, and in conformity with paragraph 43.07e (relating to services [provided] at different points), an award will be approved in favor of such agency. SF 1080, revised, will be attached to and made a part of the award when forwarded for payment.

(3) Upon disposition of the agency's claim, the claims folder will be promptly returned to the regional office of jurisdiction without awaiting the expiration of the period for appeal.

i. **Reimbursement From Other Federal Agencies**. When, following the award of burial, funeral or transportation expenses of a deceased veteran, it is subsequently learned that another Federal agency is charged with the responsibility of specifically providing such payment, action will be taken as follows:

(1) Full development will be made as to the amount such other agency has paid or will pay toward the burial, funeral and transportation expenses.

(2) The procedures governing erroneous awards (par. [43.25d]) will be followed to attempt recovery from the other Federal agency of any amount paid by the VA.

43.18 BURIAL BENEFITS PAID BY A STATE OR POLITICAL SUBDIVISION

a. No payment will be made to a State or other political subdivision of the United States or a foreign country as reimbursement for payment of burial, funeral or transportation expense, unless such expense was paid in an emergency from general funds not expressly available for such purpose under a local law, ordinance, or regulation providing for such expenditure. Information contained on VA Form 21-530 will not be routinely subjected to questioning. Accordingly, a negative response regarding the receipt of burial allowance under laws of a State or political subdivision pertaining to a veteran will, in the absence of conflicting information of record, be accepted.

b. When only a part of the plot or burial expenses have been paid or assumed by a State or local Government agency, the burial and/or plot interment allowance will be payable only to the extent that the total expenses exceed the amount paid by the State or local agency. As provided in subparagraph a above, VA payment will be made only to a claimant other than the State or local Government agency.

NOTE: The prohibition against payment of benefits to or reimbursement for amounts paid by State agencies or political subdivisions does not apply to payment of State plot allowance (par. 43.01b).

43.19 DEATH FROM INJURY IN PRIVATE EMPLOYMENT

If claim for the statutory burial allowance is filed in a case in which it is indicated that the veteran's death resulted from an injury or disability sustained in the course of private employment, liability for burial expenses may arise under [worker's] compensation or employers' liability acts.

a. The adjudication of the claim will be deferred until it has been established whether any amount has been or may be allowed on burial expenses under such an act, unless the total expenses of burial, funeral, plot-interment and transportation were such as to [make] immaterial the amount allowed or to be allowed under such an act.

b. If the amount so allowed or to be allowed equals or exceeds the amount of burial, funeral, plot-interment and transportation expenses incurred, the claim for the statutory burial allowance will be disallowed

c. If such amount is less than the amount of these expenses, the statutory burial and plot-interment allowances may be paid to the extent of the difference between such amounts, not to exceed the VA limitations.

43.20 PAYMENT BY PRIVATE ORGANIZATIONS (PREPAID BURIAL)

a. **General**. Many organizations and companies, variously designated (e.g., lodge, union, fraternal or beneficial organization or society, burial association or insurance company), issue policies or contracts, or provide by their bylaws that upon payment of stipulated premiums, assessments, or dues, burial and funeral services will be provided through the furnishing of merchandise and/or services, or, in lieu thereof, the payment of a benefit in cash. Under the provisions of VAR 2604(A), if services and/or merchandise were furnished or payment was made by the organization *to the person [providing] the burial and funeral services*, no reimbursement will be allowed to the organization making payment.

b. **Payment of Remaining Balance or Premiums**

(1) When the policy or contract does not cover the full cost of the services and/or plot, the balance remaining may be paid to the funeral director and/or cemetery owner, if unpaid, or the person or entity (other than the contractual organization) who bore the expenses. Payment will be limited to the statutory allowance or the unpaid portion of the bill, whichever is less.

(2) If the policy or contract covers the entire cost of services and/or plot, the premiums or like sums paid by the veteran for the burial policy or burial insurance will be considered to be a prepayment of burial expenses. The veteran's estate may be reimbursed to the extent of premiums paid, but not to exceed the statutory allowances and provided that the funds would not revert to the insurance company (par. 43.08).

(3) Payment of the burial and plot-interment allowance to any claimant is barred if the payment would revert to the funds of the organization or relieve it of its burden. Burial as a humanitarian measure does not bar payment. (See par. 43.21.)

c. **Payment to a Designated Beneficiary**

(1) Under VAR 2604(A)(1), any contract or policy (including an accident or medical payments contract or policy) which provides for payment of a *specific amount to a designated beneficiary* upon the death of the veteran-insured, will not affect the burial or plot-interment allowance payable in the case; it will be considered tantamount to life insurance.

(2) If the contract or policy provides, under a "facility of payment" clause, for payment to a designated beneficiary but with the retained option to make payment direct to the person [providing] burial and funeral services, or furnishing the plot, and payment is made under such option, the designated beneficiary will be considered as having borne the expenses to the extent of the proceeds so used. Accordingly, such payment will not bar payment of the burial allowance to the designated beneficiary or any other person as reimbursement. For example, if the burial expenses have been paid by a friend or relative who has been reimbursed by the insurance company, such person will also be entitled to VA burial allowance on the basis of receipted bills. However, since payment of the burial or plot-interment allowance would be precluded if it would revert to the funds of the company, a claim filed by the insurance company for payment made direct to the funeral director or cemetery owner would not be allowed.

d. **Development**. In general, statements contained on VA Form 21-530 relative to the usage of personal funds will be accepted without question. When the evidence indicates a policy or contract of this character may have been held by the deceased, proof as to its existence and method of settlement will be obtained.

(1) **Copy of Policy or Contract**. A copy or sample copy of the policy or contract will be required only when a proper determination may not be made on the basis of other evidence of record. In order to avoid the necessity of requesting successive sample copies of policies issued by the same association, such sample copies should be placed in a separate file, or appropriate record maintained of the determination based thereon.

(2) **Insurance**. When conflicting information is of record requiring definite proof as to whether payment of insurance was made to a claimant for the statutory burial allowance or plot-interment allowance as an individual or to the estate of the deceased veteran, the matter will be clarified by corresponding directly with the home office of the insurance company involved. In the absence of conflicting information, the amount or manner in which payment of insurance was made will be disregarded in the adjudication of claims for the statutory burial allowance, irrespective of the responsibility of the recipient to pay the burial expenses.

e. **Effect of an Assignment**. When a cash payment, which may consist of a contribution or the proceeds of the policy or contract, is made by the organization or company to the person [providing] burial and funeral services or furnishing the burial plot under an assignment made thereto by the designated beneficiary, such action will not cause a reduction in the amount of the statutory burial allowance or plot-interment allowance otherwise payable, as such cash payment is considered to be the funds of the designated beneficiary to whom the statutory burial allowance or plot-interment allowance may be awarded if otherwise proper. However, if the policy or contract provides that by reason of such assignment, services and merchandise be furnished in an amount greater than the cash value payable to the designated beneficiary, the difference will be treated as a cash payment to the person [providing] burial services and no reimbursement of this amount will be made from the burial allowances.

f. **Items for Which Reimbursement May Not Be Made**. When services and/or merchandise were furnished by an organization or when payment of a benefit due was made to the person [providing] burial and funeral services or furnishing the burial plot, and the policy or contract specifically names the items or services not provided for in the policy or contract if they are also not

allowable under VA regulations, reimbursement may not be made. Neither will reimbursement be made on allowable items or services in excess of the restriction placed thereon by any VA regulation.

43.21 BURIAL AS A HUMANITARIAN MEASURE

When an organization provides a burial or furnishes a burial plot as a humanitarian measure and not pursuant to legal obligation, it may be reimbursed for its actual cost not in excess of the non-service-connected or service-connected burial allowance, as appropriate, and the plot-interment allowance for furnishing the plot. (See VAR 2604(A)(2).)

43.22 UNCLAIMED BODIES

a. **Authority of Director of Regional Office or VA Medical Center.** If a veteran's body is unclaimed by relatives or friends, the Director of any regional office or Director of any VA medical center is authorized to arrange for burial, under the policy of the VA that the body not be permitted to be buried in a potter's field. When necessary in establishing identity, fingerprints will be obtained and forwarded to the Director (232), VA Records Processing Center, St. Louis, Missouri 63115, for comparison of the fingerprints by the service department, provided such departments are likely to have prints.

b. **Burial Arrangements.** After eligibility to the statutory burial allowance has been determined, the Director is authorized to arrange with a funeral director to obtain custody of the body and [provide] burial services. The amount provided for burial allowance [and/or interment expenses] will be available for burial of the deceased upon submission of VA Form 21-530 and a supporting statement as provided in VAR 2603. The Director is authorized to make necessary arrangements to effect complete burial within the statutory limitation of the [amount payable.] (See also par. 43.12.)

43.23 AWARDS/DISALLOWANCES

a. **General.** Screen 307, Burial Award/Disallowance, is designed to introduce data necessary to generate an award of burial benefits on established death issues.

b. **Claims Establishment.** Burial issues will be established using:

(1) Payee number 00

(2) End product code 160

(3) Benefit type CPD

NOTE: Although FNOD processing is essential to Hines DPC acceptance of burial awards, those claims will be established (CEST) without separate notice of death action under the FNOD command. If the BIRLS record does not indicate that FNOD processing has been taken on the basis of a prior notice of death, the appropriate fields on the 101 screen will be completed at the time the claim is established.

c. **Development.** Information necessary to determine whether benefits may be awarded or disallowed will be obtained through use of the Screen 201 (Request for Military Service Data) and Screen 206 (Request for Death/Burial/Reimbursement Data).

d. **Award/Disallowance Data Entry (Screen 307)**

(1) **Name and Address Entries**

(a) The *claimant's* name and address will be displayed from prior entries. If correction is necessary in this field, changes may be made directly on screen 307.

(b) Name and address of *person to be notified* (other than the claimant-payee) will be entered. (Example: If the funeral director is the claimant, the surviving spouse or other person responsible for ordering the services should be notified.)

(2) **BURIAL DATE**. Entries are month, day, and year (XX-XX-XX).

(3) **SUPPLEMENTAL PMT**. Enter "Y" if the payment is supplemental.

(4) **PREVIOUS PLOT PMT**. Enter "Y" if an award for plot was made previously.

(5) **NSC STAT [ ] OR XXXXXX**

(a) Enter "Y" in the first field if the award is for the standard non-service-connected burial allowance based on wartime service or if eligibility for the standard burial allowance is established by rating, or

(b) Enter the exact amount in dollars and cents (XXX.XX) in the second field if the award is based on non-service-connected death. [ ]

(6) **PTE**. Enter "Y" if the veteran did not have wartime service, but a rating decision has determined eligibility for the burial allowance.

(7) **NON-VET**. Enter "Y" if a nonveteran qualifies for burial benefits under VAR 2605.

(8) **PLOT STD [ ] OR XXXXXX**

(a) Enter "Y" in the first field if the standard [ ] plot/interment allowance is payable, or

(b) Enter the exact amount in dollars and cents (XXXX.XX) in the second field if less than the standard [ ] plot/interment allowance is payable.

(9) **STATE PLOT PMT**. Enter "Y" if plot allowance is payable to a State or political subdivision thereof (see par. 43.06g[(4)](d)).

(10) **TRANSPORT**

(a) Enter the exact amount in dollars and cents (XXXX.XX) in the "Transportation" field if transportation charges are payable.

(b) Enter "Y" in the SC or NATL CEM field, as appropriate, to indicate whether transportation charges are payable because cause of death was service connected or because the body was transported to a national cemetery.

(11) **SC STD [ ] OR XXXXXX**

(a) Enter "Y" in the first field if the award is for the standard [ ] allowance based on service-connected death, or

(b) Enter the exact amount in dollars and cents (XXXX.XX) in the second field if less than [the standard allowance] is payable based on service-connected death.

(12) **HEADSTONE/MARKER AMT XXXXXX**

(a) Enter the exact amount in dollars and cents (XXXX.XX) of reimbursement for expenses incurred in acquiring a privately purchased headstone or marker, or for additional engraving.

(b) Reimbursement for headstone or marker expense cannot be paid in combination with other award actions and cannot exceed the amount authorized by VAR 2612(E).

(13) **FOR AWARD USE ONLY: PLOT/INTERMENT DISALLOWANCE REASON.** If *only* payment of Plot/Interment allowance is disapproved and an award is otherwise approved for burial benefits, enter the reason for disallowance. Disallowance reasons, and the required entries, are listed below:

(a) NATLC–Burial in a national cemetery or a cemetery under the jurisdiction of the U.S. Government.

(b) EMPLY–Plot and interment costs paid by the deceased veteran's employer.

(c) NOINT–No plot or interment costs were incurred.

(14) **SPECIAL PARAGRAPH CODE.** Entries may be either "2" or "3" or "4" corresponding to codes listed in MP-6, part IV, supplement No. 1.1, paragraph 401.03b.

(a) Entry of "2" will add to the generated letter a paragraph that determination as to service-connected death is pending.

(b) Entry of "3" will add a paragraph advising the claimant that an additional amount may be payable for transportation expense upon submission of necessary evidence.

(c) Entry of "4" will add both special paragraphs under codes 2 and 3 above.

NOTE: If a dictated letter to the claimant is required in lieu of a generated letter, entry must be made in the Letter Suppressor field on screen 501, after *the claim has been referred for authorization. This procedure suppresses the letter to the claimant only, not the letter to the person to be notified, if applicable.*

(15) **Disallowance Entries.** For all disallowance reasons, except a Plot/Interment disallowance (see subpar. (13) above), "Y" will be entered in the appropriate disallowance field. The disallowance reasons are the standard reasons currently in use.

e. **Generating Award or Disallowance**

(1) **GAP.** When all data necessary to support an award or disallowance have been entered on screen 307, enter "GAP" in the next screen field. Award or disallowance documentation and transactions will be generated as follows:

(a) Service-connected burial benefits:

1. Burial allowance–05S

2. Burial plus national cemetery transportation–05T

(b) Non-service-connected burial benefits:

1. Burial and/or plot allowance–05W

2. Burial and national cemetery transportation–05U

3. State cemetery plot allowance–05P

(c) Headstone/marker reimbursement–05V

(2) **Remarks**

(a) When a denial of service-connected benefits is made simultaneously with or subsequently to an award of non-service-connected burial benefits, the generated award will be annotated to include the notation "no evidence of service connection," or "S/C denied by rating dated _____," as appropriate.

(b) When the award to be authorized is payable in foreign currency (including Philippine pesos cases), the notation "Not to exceed _____ American dollars" will be entered on the generated award. The award signed by the preparer and authorizing official will then be referred to the Finance activity by VA Form 3230 for payment outside the system. Award approval on screen 501 will *not* be taken in these cases as it would result in issuance of system generated payment.

(c) Appropriate notations will be entered, e.g., overpayments. (See par. 15.07b.)

(d) When the award involves national cemetery transportation payment, the national cemetery in which burial occurred will be noted on the generated award.

f. **Authorization**

(1) **Awards.** Awards will be prepared by an adjudicator (or burial clerk) for approval by an authorizer. [See paragraph 15.09a.]

(2) **Disallowances.** Disallowances will be prepared by an authorized claims examiner for approval by an authorizer except for the following types. These may be signed (in the space for the authorizer's signature) and approved by an adjudicator (or burial clerk) who is authorized by the Adjudication Officer as fully qualified to do so without reference to an authorizer for review and approval.

(a) Record purpose disallowances.

(b) Disallowances when character of discharge is a bar and a formal decision is of record.

(c) Disallowances, based on peacetime service, when a formal rating denies service connection for cause of death and establishes that the veteran was not discharged for (nor eligible for a discharge for) a disability incurred in line of duty.

(d) Disallowances of claims filed by an improper claimant; i.e., by the person who authorized the service and there is an unpaid creditor who provided the service.

NOTE: Approval of awards and disallowances will be indicated by entry by the authorizing official of "Y" in the "AUTHORIZED" field on screen 501 and by his/her signature on the generated award/disallowance document.

g. **Award/Disallowance Letters**

(1) Burial letters will be routinely generated to claimants. However, when the payee is a funeral director or cemetery owner, notice of the award will not be routinely furnished.

(2) When the payee is the funeral director or cemetery owner FL 21-882 will be prepared to accomplish notification to the surviving spouse or the person responsible for ordering the burial or funeral services.

(3) FL 21-133 or dictated letters will be used for notification of disallowance of a claim for the burial allowance. However, notice of appellate rights will not be given in instances in which the death of the veteran occurred in service (par. 43.17c(1)).

(4) Claimant letters may be suppressed during authorization by placing "X" in the "LETTER SUPPRESSOR FIELD" of screen 501.

43.24 DISPOSITION OF CLAIMS FOLDERS AND OTHER MATERIAL

See paragraph 37.56.

43.25 ERRONEOUS AWARDS

a. **General.** Awards of the burial allowance, or plot allowance, or reimbursement of headstone or marker expense, determined to be erroneous *after payment has been made*, will not, under any circumstances, be canceled. Unless adjustment is effected as provided in this paragraph, the overpayment will be reported to the Finance activity by formal memorandum for regular recovery procedures.

b. **Check Returned by Payee.** When the check for the benefits authorized is returned by the funeral director or other creditor with the explanation that the account has been paid in full or in part, appropriate action should be taken to secure a formal claim and supporting evidence from the person entitled.

(1) If the account of the funeral director or other creditor has been reduced by a partial payment by the other person, a "Supplemental" award to the funeral director or creditor will be made in the correct amount.

(2) The new award to the funeral director or creditor, as well as the award to the person who made payment, will be checked as a "Supplemental" action (code 2) and contain a statement in "Remarks" to the effect that "Original check for $_____ to_____(name)_____, returned and canceled."

c. **Check Not Returned.** If the funeral director or creditor states that the check was negotiated but full or partial restitution therefrom has been made to the person making total or partial payment on the account, and entitlement of such person is established, no award or other action will be required.

(1) If entitlement of the secondary payee is not established, the original payee will be requested to furnish the necessary evidence to establish entitlement of the secondary payee, preferably by certified statements showing whose funds were used to pay the burial expenses and receipts showing payment by the secondary payee.

(2) If such evidence is not submitted, the original payee will be required to refund the entire amount paid under the award, after which the claim may be readjudicated.

d. **Death Benefit Payable by Other Federal Agency.** When the statutory burial allowance has been erroneously awarded because of the death of the veteran while in the active service or under other circumstances enumerated in VAR 2604(B) (see par. 43.17), the case will be temporarily transferred (par. 2.05c) to the WRO for the following action, citing "M21-1, par. 2[illegible]b" as authority. (See par. 43.17h re reimbursement to other agencies.) In the WRO: ch. 467

(1) A memorandum will be dispatched to the Finance activity, setting forth the facts and requesting that reimbursement be obtained from the service department or other Federal agency.

(2) If reimbursement by the service department or Federal agency is not possible, the matter will again be referred to the Finance activity as an overpayment for recovery under the regular procedures. For this purpose, cases temporarily in WRO will be returned to the appropriate regional office for recovery of the overpayment by the local Finance activity.

43.26 HEADSTONES, MARKERS AND REIMBURSEMENT FOR NON-GOVERNMENT HEADSTONES AND MARKERS.

a. **Request for Government Headstone or Marker.** When a request is received for an appropriate, Government headstone or marker, it will be referred to the Department of Memorial Affairs (42A), VA Central Office, Washington, D.C. 20420.

(1) Government headstones and markers are furnished for the unmarked graves of:

(a) Any individual buried in a national cemetery [state-owned veterans cemetery,] or in a post cemetery; or

(b) Any of the following individuals eligible for burial in a national cemetery, but not buried there:

1. Any veteran [meeting length of service requirement as established by Public Law 96-342]; or

2. Any person who died while in the active military, naval or air service; or

3. Any member of a Reserve component of the Armed Forces, and any member of the Army or Air National Guard, whose death occurred under honorable conditions while hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while performing active duty for training, or inactive duty training; or

4. Any member of the Reserve Officer Training Corps of the Army, Navy, or Air Force whose death occurred while attending or on authorized travel to training camp or practice cruise, or while hospitalized or undergoing treatment, at the expense of the United States, for injury or disease incurred during an authorized training camp or practice cruise.

5. Any member of specifically designated groups recognized as veterans as a result of 1977 legislation allowing the Department of Defense to grant military discharges for certain wartime service previously considered civilian.

(c) Soldiers of the Union and Confederate Armies of the Civil War.

(2) A memorial headstone or marker, when requested, is furnished to commemorate any veteran whose remains have not been recovered or identified, were buried at sea, were donated to medical science, or were cremated and the remains scattered, for placement by the applicant in any national, private or local cemetery.

b. **Reimbursement for Non-Government Headstone or Marker.** The VA may pay a monetary allowance as reimbursement for the costs incurred in acquiring a non-Government headstone, marker, or for additional engraving on an existing headstone or marker for veterans otherwise entitled to a Government headstone or marker (see subpar. a, above), except for those veterans buried in national, State-owned veterans or post cemeteries or for soldiers of the Union or Confederate Armies.

(1) **Other Eligibility Requirements**

(a) The veteran must have been buried on or after October 18, 1978.

(b) The deceased's grave or memorial site must not have been previously marked for the deceased.

(c) The headstone or marker must have been privately purchased for placement in a nonnational cemetery.

(2) **Amount Payable.** The amount of the reimbursement will be the lesser of:

(a) The actual cost of the non-Government headstone, marker or additional engraving, or

(b) The amount determined by the Department of Memorial Affairs to be in effect at the time of purchase. This amount is determined at the end of each fiscal year and is based on the average cost of Government-procured headstones and markers during that period (38 CFR 3.1612(e)).

(3) **Claims**

(a) A properly completed VA Form 21-8834, Application for Reimbursement of Headstone or Marker Expenses will be required to claim this benefit. The original is for use by the regional office and will be filed subsequently in the claims folder.

(b) Action to award benefits will not be taken without a receipted bill showing the following:

1. The name of the deceased veteran for whom the headstone, marker, or additional engraving was purchased;

2. A description of the nature and cost of the merchandise or services;

3. The name of the person(s) who made payments;

4. All credits, and the amount of any unpaid balance.

NOTE: An affidavit or other statement by the claimant purporting to show payment is not acceptable in lieu of a receipted bill. Receipts submitted in support of a claim are to be retained as a part of the claim and will not be returned.

(4) **Claimants.** Any person, including the executor, administrator, or a person representing the deceased's estate, who has paid for a non-Government headstone, marker, or engraving on behalf of the deceased (see par. 43.08a).

(5) **Time Limit for Claims and Evidence.** [A General Counsel Opinion dated July 31, 1989, held that the 2-year limitation for filing a burial benefit claim under 38 U.S.C. 904 does not apply to claims for a monetary allowance in lieu of a headstone or grave marker under 38 U.S.C. 906(d).].

(6) **Priority of Payment**

(a) Normally, the first claim for reimbursement accompanied by a receipted bill will take precedence over any other claim for reimbursement.

(b) In the event that reimbursement is claimed by more than one person who has paid for a privately purchased headstone, marker, or additional engraving, the procedures outlined in paragraph 43.07b(1)(a) are applicable.

(7) **Award Disallowance Procedures.** Awards and disallowances will be prepared in accordance with the provisions of paragraph 43.23.

CHAPTER 44. SERVICEMEN'S INDEMNITY

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CHAPTER 44. SERVICEMEN'S INDEMNITY

44.01 REQUIREMENTS OF SERVICE AND DEATH

a. General. The requirements of dates and types of service and delimiting dates of death of veterans for entitlement to servicemen's indemnity are contained in VA Regulation 2800. Servicemen's indemnity is payable only where:

(1) The serviceman either had no insurance or insurance with a face value of less than $10,000 in force at the time of his death; and

(2) The serviceman had active service on or after June 27, 1950; and

(3) Died, prior to January 1, 1957, either in service or within 120 days after separation or release from active service; except that

(4) As to ROTC service specified in VA Regulation 2800(A)(2), death must have occurred in service prior to August 1, 1956.

b. Character of Discharge. There is nothing in the Servicemen's Indemnity Act of 1951, as amended, which conditions the right to the 120 days coverage upon a discharge or separation being honorable in character. It is required only that there must have been an actual "separation"; and provided only that there is no forfeiture under section 8 of that act. (AD 904)

c. Death. A rating will be required only for the purpose of determining whether the disability (injury or disease) causing death was actually incurred during the designated period of time while a volunteer, reservist or selectee (as covered by VA Regulation 2800(B)(2) and (3)) was en route to the place of assembly or induction. Determinations as to line of duty and willful misconduct are not an issue.

44.02 ELIGIBLE BENEFICIARIES

The classes of persons who may be designated beneficiaries and, in the absence of a designation, the order of preference, as listed in VA Regulation 2802 are:

a. Surviving Spouse (including deemed valid widow). See paragraph 44.08.

b. Child or Children of any age or marital status, including an adopted child and

(1) Stepchild. The requirement that the stepchild must have been a member of the veteran's household is applicable only for eligibility by devolution. If designated by the serviceman, the bare legal relationship of "stepchild" is sufficient.

(2) Illegitimate Child, only if designated and the natural relationship is established.

c. Parents, including a parent by adoption. If designated, the bare legal relationship of stepparent is sufficient. The requirement of loco parentis is applicable only for eligibility by devolution. However, abandonment of the serviceman by a natural parent during the serviceman's infancy will not preclude entitlement by devolution, unless some other person last stood in the place of parent. If the serviceman was born an illegitimate and not legitimatized before his death, proof of relationship by consanguinity will suffice for entitlement of his mother by devolution; but as to his father, the loco parentis requirement must be met.

d. Brothers and Sisters, including those of the halfblood and those through adoption. Legitimacy is not a factor in determining the blood relationship. Where the serviceman was born an illegitimate and not legitimatized before his death, servicemen's indemnity is payable by devolution or designation to brothers and sisters of the same mother and, if a familial relationship with the veteran existed at the time he entered service, of the same father. Where the blood relationship of brothers and sisters is established, their legitimacy or illegitimacy is of no legal significance.

44.03 DETERMINATION OF ELIGIBLE BENEFICIARIES

The provisions of VA Regulations 2804 and Z806 will be applied when determining the development required and the shares of the person or persons to whom servicemen's indemnity will be paid. Formal decisions as to loco parentis, stepchild, stepparent, illegitimate child, etc., will be prepared in the format prescribed in paragraph 14.34 when required under the instructions provided in the governing chapter elsewhere in this manual.

44.04 DESIGNATIONS OF BENEFICIARIES

a. Service Department Procedure. A record of beneficiary designations and changes therein has been maintained by the service departments. Forms were devised by them for this purpose but any statement signed by the serviceman which shows his intent with respect to disposition of servicemen's indemnity will be accepted. However, a designation of beneficiary for insurance is not effective as a designation for the payment of indemnity. Where the serviceman declined to designate a beneficiary, his signed statement to that effect was obtained.

(1) The report of death from service department will be reviewed to ascertain which of the following notations appears thereon:

(a) No record of indemnity designation under Public Law 23, 82d Congress.

(b) Deceased declined to designate indemnity beneficiary under Public Law 23, 82d Congress.

(c) Deceased designated indemnity beneficiary under Public Law 23, 82d Congress.

(2) Where notation (a) appears on the death report, no further information may be expected from the service department and adjudication may proceed on the basis that no beneficiary was designated. However, where either (b) or (c) appears, photocopies of all statements respecting beneficiary designation will be required. If not on file, they will be requested by VA Form 3101. These copies will be used in routine cases but in questionable or contested claims the service department will, upon request, furnish on a loan basis or permit the inspection of, the originals of the designations or statements.

(3) Where no notation regarding beneficiary designation for indemnity appears on the report of death, the service department will be requested by VA Form 3101 to furnish information as to whether there is any record of such designation or declination to designate as beneficiary and, if so, that photocopies be furnished.

b. Designation by Will. As stated in VA Regulation 2805, the right to designate a beneficiary for indemnity by will is limited to original designations and does not extend to changes of designations. Information concerning a serviceman's will is necessary only when there is no beneficiary designation for the indemnity or when the designation is inoperative because of circumstances such as the death of the designated beneficiary before the serviceman, thereby creating a situation tantamount to there being no designated beneficiary at the time of the serviceman's death.

44.05 FORFEITURE

Section 8, Public Law 23, 82d Congress, and VA Regulation 2816 provide for restoration of indemnity rights upon restoration to active duty. If these circumstances are present, persons who have forfeited insurance rights under section 612, National Service Life Insurance Act of 1940, have not necessarily forfeited rights to the indemnity. Otherwise, a determination of forfeiture by a veteran of the right to insurance or indemnity will be applicable to the other benefit.

44.06 AMOUNT AND METHOD OF PAYMENT

Under the provision of the act, the indemnity coverage authorized is $10,000 less the amount of insurance in force at the time of death; which is payable only in 120 monthly installments at the rate of $9.29 per month per thousand. The amount to be paid, therefore, will be the exact difference, if any, between $10,000 and the amount of insurance in force under United States Government Life Insurance and/or National Service Life Insurance (VA Regulation 2810); including those cases in which the insurance in force has been terminated or reduced to less than $10,000 for such reasons as:

a. Reduced because of understatement of age.

b. Surrendered for cash or for paid-up insurance.

c. Retained in force as extended insurance.

44.07 INITIATION OF CLAIMS

a. Designated Beneficiary. If the designated principal or contingent beneficiary is a competent adult, veteran's minor widow, or a minor emancipated by service in the Armed Forces, a dictated letter or FL 21-129, and VA Form 21-4125, Claim for Life Insurance or Indemnity, will be sent to the designated beneficiary. Proof of relationship will be requested, if not already on file. Except where the application may be sent to a parent as fiduciary of a minor beneficiary under VA Regulation 1850(C), if the designated beneficiary is a minor or incompetent, VA Form 21-592 will be addressed to the appropriate Chief Attorney with VA Form 21-4125 attached for completion by the fiduciary. The Chief Attorney will also be requested to obtain the submission of proof of relationship where necessary.

b. No Designated Beneficiary. If the preferred beneficiary is known, the procedure outlined in subparagraph a will be followed. If the preferred beneficiary is not known, a dictated letter or FL 21-130, with VA Form 21-4117 enclosed, will be sent to the next of kin. When the completed VA Form 21-4117 is returned and a determination made as to the preferred beneficiary, the procedure outlined in subparagraph a above will be followed.

44.08 CONTESTED CLAIMS

The procedure outlined in DVB Manual M21-2, chapter 11, will be followed, with the exception that letters to claimants will not include notice of a right to sue. Where servicemen's indemnity is in course of payment to another relative who would not have been entitled if there had been no impediment to the marriage of a woman who has filed claim (as the preferred or designated beneficiary), on the basis of a deemed valid marriage, such claim will be adjudicated under the procedures provided in paragraph 8.07 and the case handled as involving contested claims filed subsequent to approval of awards. If a claim as widow is allowed solely on the basis of the liberalized provisions of the law and regulations, only the remaining unpaid installments will be awarded. (See VA Regulation 2814 (B) and (D).)

44.09 DISALLOWANCES

VA Form 21-523a, No Claim Filed or Disallowance of Claim in Death Cases, will be prepared (original only) by an adjudicator for approval by an authorization officer when a formal disallowance is required.

a. Formal Disallowance Required. A formal disallowance will be required:

(1) When it is determined on the basis of all available evidence that the requirements for entitlement have not been met on the initial claim filed by each individual claimant (including a claim filed by an individual on behalf of two or more children).

(2) In the extremely unlikely event that a claims folder is encountered in which no claim for servicemen's indemnity has been filed, but the veteran died prior to the applicable delimiting date, having rendered the prerequisite service, so that servicemen's indemnity would be payable, except that there is no person to whom an award may be made.

b. Formal Disallowance NOT Required. VA Form 21-523a will not be prepared:

(1) Where a prior award or disallowance has been prepared on an earlier claim for servicemen's indemnity by the same individual.

(2) When disallowing an informal claim, including an unsigned application. The claimant will not be given notice of any right of appeal, but will be informed that final determination as to entitlement may not be made in the absence of a formal (signed) application.

(3) For failure to furnish evidence, since there is no time limitation thereon in connection with claims for servicemen's indemnity, except as provided for the adjudication of contested claims.

(4) Upon the death of the last person within the classes of eligible beneficiaries. (Stop award action will be taken as provided in M21-2.)

c. Notice of Disallowance. Irrespective of whether preparation of VA Form 21-523a is or is not required, whenever action is taken to disallow a claim for servicemen's indemnity, the claimant and all interested persons will be furnished a full and adequate explanation, sufficient to enable the recipient to understand the reason(s) for the action taken. The claimant will be informed of the right of appeal, in accordance with the provisions of paragraph 18.02.

d. Preparation of VA Form 21-523a. See M21-2.

e. Disposition of Disallowance and Related Material. See M21-2.

44.10 AWARD ACTIONS

See M21-2.

44.11 STOPS, SUSPENDS AND RESUMES

See M21-2.

44.12 SERVICEMEN'S INDEMNITY IN RELATION TO DIC

See paragraphs 42.05a, 42.09b, 42.11 and 42.12.

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CHAPTER 45. ORGANIZATION AND FUNCTIONS OF THE RATING BOARD

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CHAPTER 45. ORGANIZATION AND FUNCTIONS OF THE RATING BOARD

45.01 COMPOSITION

a. **General.** There is established in each Adjudication Division a rating section composed of such members as are necessary and justified by the workload. The Adjudication Officer will insure that rating specialists are fully qualified to consider all types of cases.

b. **Rating Board Organization.** Each rating board will consist of three [members, one of whom will be a medical doctor. A dental rating specialist may be substituted for the medical doctor for preparation of dental ratings (par. 51.07). The Adjudication Officer will designate one well-trained and experienced member to act as chairperson of each rating board. (See par. 45.04a.)]

45.02 OPERATIONAL DIRECTION

a. **General.** Rating boards will operate under the direction of the Adjudication Officer, Assistant Adjudication Officer or section chief. One [well-trained and experienced] member of each board will be designated as chairperson [by the Adjudication Officer]. (See par. 45.04a).

b. **Adjudication Officer Responsibility.** The Adjudication Officer shall be responsible for establishing suitable controls for the location and assignment of claims folders in order to accomplish the rating function efficiently and at the same time insure that the workload is distributed equitably.

c. **Temporary Board Members.** The Adjudication Officer may detail temporarily any technically qualified employee to serve as a member of the rating board upon compliance with personnel requirements as to detailing of employees. The employee will be [trained in] basic rating principles. These assignments should help the employee to better understand rating board functions and also to create a ready reserve of potential rating specialists to accommodate projected staffing needs.

45.03 ROTATION OF RATING BOARDS

In the interest of obtaining uniformity in rating practice, it is the policy to rotate members of the rating boards at intervals of approximately 6 months. This policy requires changing personnel on the specific board to insure that the same members do not serve together for prolonged periods and that the same board does not review the same cases for excessive periods.

a. Due to differences in the size of offices and the fact that in some offices medical rating specialists may be serving on more than one board, complete rotation may not be possible; however, within the limitations imposed by the number of rating boards and number of rating specialists, each office is expected to rotate board members in such a manner that whenever possible no member will be placed on a rating board with another member with whom he/she has just completed serving.

b. When possible, reassignment should be such that no member will be reviewing the same cases previously assigned.

c. Departure from this policy must have specific written authorization from the regional office Director.

45.04 RESPONSIBILITIES OF INDIVIDUAL MEMBERS

[a. **Chairperson.** The chairperson is responsible for the screening and distribution of the board's workload as well as the board's effectiveness of operations. The rating board chairperson is expected to report any situation which hinders the efficiency of the board to the chairperson's first line supervisor. Rating board chairpersons will conduct all personal hearings before the board. (See par. 18.18.)]

b. Other Members. Rating board members, in rating decisions to which they are signatories, will be jointly and individually responsible for the review of the folder and for correctness of action in connection with all phases of the case. Each rating specialist will be responsible for development of the pertinent facts bearing on his/her particular speciality and, in the process, may question and consult on any legal, medical, or occupational matter involved, with the right of dissent from the majority decision.

45.05 SIGNATORIES TO RATING DECISIONS

[a. General. As a general rule, rating decisions will be signed by a medical or dental rating specialist and two other rating specialists. One of the signatories will be the chairperson. (See also par. 46.05 regarding deferral of rating action for development.)]

b. Absence of a Member. In the absence of a regularly assigned member of a rating board, the completed rating should be signed by another rating specialist [ ] or other qualified employee designated for this purpose by the section chief.

(1) The substitute rating specialist will review the folder, fully participate in the rating and be jointly responsible with the other specialists for its completeness and accuracy, adding the word "acting" after his/her signature.

(2) The mere signing of the typed rating by one rating specialist "for" another is not permissible.

45.06 ACTION ON DISSENTING OPINION

a. General. In case of a dissent, the nonconcurring rating specialist will write the word "Dissenting" in the space provided for his/her signature on the rating decision. He/she will also prepare and sign a memorandum on a rating decision form, setting forth the basis for the dissent. The case then will be referred to the Adjudication Officer for determination as to whether an administrative appeal will be taken. (See pars. 18.15 and 19.02c.)

b. Adjudication Officer Agrees With Majority. If the Adjudication Officer is in agreement with the majority members, he/she will so endorse the original and any copies of the typed rating decision. The decision and claims forlder will be referred to the authorization unit for processing.

c. Adjudication Officer Agrees With Minority. If the Adjudication Office agrees with the dissenting member, he/she will so endorse the rating decision and indicate that an administrative appeal is taken.

d. Action on Administrative Appeal. When an administrative appeal is taken, there will be no adjudicative action on the disputed point in the decision until the appeal has been decided. However, this does not preclude a favorable decision in regard to any other lesser or partial benefit. In assigning a favorable rating, a new rating decision will be prepared and the disputed issue will be shown under rating code 38. The decision on which the appeal is taken and the minority memorandum will be retained in the claims folder.

45.07 DIFFERENCE OF OPINION UNDER [38 CFR 3.105(b)]

See paragraph 19.05.

45.08 DIFFERENCE OF OPINION ON SUPERVISORY REVIEW

See paragraph 19.06.

45.09 JURISDICTION

a. General. Rating boards are vested with authority, as rating agencies of original jurisdiction, to render decisions and take other actions requiring board consideration in claims for disability compensation and pension, death compensation and pension, dependency and indemnity compensation, burial benefits, accrued benefits and other benefits which require a rating decision under VA laws and regulations.

b. **Application of VA Laws.** The boards will apply the provisions of all pertinent laws, regulations, schedules for rating disabilities, policy statements, procedures, Administrator's decisions and other legal precedents in making their decision. They will determine the admissibility and weight of the evidence, the need for further development of the evidence and whether there is need for a VA examination.

45.10 EVALUATION OF EVIDENCE

a. **Adequacy of Examination and Hospital Reports.** If a VA report of examination (including VA Form 21-2680, Examination of Housebound Status or Permanent Need for Regular Aid and Attendance) is deemed inadequate in any essential particular, the board will outline the inadequacy and return the report through channels for a corrected supplementary report or for reexamination. (See also par. 55.12.)

(1) If a report from a State, county, municipal, contract, or recognized private institution or hospital is inadequate in any essential particular, clarification will be requested, and if a satisfactory corrected report cannot be obtained within a reasonable period of time, a VA examination will be authorized.

(2) In the event a VA report of hospitalization is deemed inadequate in the following types of cases, request should be made for the original clinical records, including nurses' and doctors' orders:

(a) Cases involving injury or aggravation of injury or death as the result of hospitalization, medical or surgical treatment or examination.

(b) Death cases when the principal or contributory cause of death is questionable. (Par. 56.10)

(c) Death cases when the veteran, who died from a nonservice-connected cause, had a service-connected neuropsychiatric disability which reasonably may have impeded, obstructed, or otherwise interfered with treatment for the condition which caused death but the report does not clarify this issue.

b. **Probative Value of Evidence From Sources Outside VA.** Ordinarily, medical and lay testimony from sources outside the VA may be accepted at face value unless refuted by other evidence of record or by medical facts and principles as contained in the latest textbooks. In the presence of questionable or conflicting evidence, further development may be indicated to include, if in order, field examinations and/or social surveys to obtain transcripts of original records or other appropriate records.

c. **Testimony Under Oath or Duly Certified.** Testimony required to be under oath or duly certified will not, if unsworn or uncertified, be returned unless the board considers such evidence is material to a favorable determination. If material, an exact copy will be made of the testimony and forwarded to the claimant or his/her representative, or, if indicated, to the person testifying, for notarization or certification. (See par. 7.05.)

45.11 SPECIFIC MAJOR DECISIONS

Specifically, rating boards will be responsible for rating decisions on the following major issues relating to entitlement:

a. Service connection of diseases and injuries (for LOD, willful misconduct and vicious habits, see pars. 14.03 and 14.04). These decisions may be made for administrative purposes (including insurance, when requested) as well as for the other benefits specified in paragraph 45.09a.

b. Evaluation of disability under the applicable laws and rating schedules, including statutory benefits (loss or loss of use, need for aid and attendance etc.).

c. Causes of death, primary and contributory, and relationship of service-connected diseases or injuries to causes of death.

d. Competency or incompetency of payee beneficiaries and, when permanent incapacity for self-support is claimed, of veteran's children.

e. Whether veteran was insane at time of commission of offenses resulting in discharge otherwise precluding entitlement to benefits and in homicide cases, whether a potential beneficiary was insane at the time causing or participating in the other person's death. (See pars. 14.05 and 14.09d.)

f. Permanent incapacity of a child for self-support.

g. Incurrence of additional disability or death due to hospitalization, medical or surgical treatment, vocational rehabilitation or examination. (38 U.S.C. 351)

h. Whether peacetime incurred or aggravated disability was a direct result of armed conflict, or while veteran was engaged in extrahazardous service (when required by need for retroactive determination for period prior to July 1, 1973).

i. When requested, in insurance cases, testamentary capacity of the insured to execute change of beneficiary and/or change of optional settlement.

j. When service was less than 90 days, determine if release was due to service-connected disability, or if at time of discharge veteran had a service-connected disability which would have justified discharge for disability. (38 CFR 3.3)

k. Permanent and total disability from nonservice-connected conditions in claims for pension and entitlement to such ancillary benefits as housebound or aid and attendance [39 CFR's 3.3 and 3.351]).

l. Determination of entitlement to allowance for aid and attendance when claimed by a veteran's surviving spouse or parent and housebound for surviving spouses in receipt of DIC or Improved Pension. (See par. 47.06.)

45.12 PERSONAL HEARINGS

a. **General.** Hearings will be granted upon receipt of a specific request therefor from the claimant or his/her representative, provided no expense to the Government is incurred. When the veteran appears personally before the rating board, a notation to that effect will be made in the body of the rating decision.

b. **Procedure.** When a claimant or his/her representative requests a hearing in connection with an appeal, the rules in paragraph 18.17 will be followed. Before concluding the hearing, the chairperson will ascertain from the claimant or representative whether all the evidence he/she desired to have considered has been presented. (See par. 18.18 re conduct of hearings.)

c. **Medical Examination at Hearing.** When the veteran is examined by the medical rating specialist during a personal appearance, a record of the findings will be included in the report of the hearing. When this examination is materially different from the medical findings of record, the case will be reviewed and, if otherwise in order, a current examination will be ordered. The examination conducted by the medical rating specialist may be accepted as an informal claim for increased benefits and, if the VA examination ordered reflects entitlement to an increased rating, payments will be made from that date unless an earlier effective date is applicable.

d. **Decision Process.** At the conclusion of the hearing, or when all available evidence is of record, the rating board [members] will consider the evidence and arrive at a decision. The board [members] that conducted the hearing will be assigned the case for final rating, even after examination or other development is undertaken. The claimant will be informed of the decision. (See also par. 18.20.)

[e. **Travel Section of the Board of Veterans Appeals.** Rating board members are encouraged to attend hearings held locally by the Travel Sections of the Board of Veterans Appeals. Rating board members in attendance will act as observers *only*. Attendance must be coordinated with the chairperson of the Travel Section and permission obtained on a case-by-case basis from station management and the chairperson of the traveling board.]

45.13 REVIEW OF RATING DECISION BY SERVICE ORGANIZATIONS

[a. If] there is a power of attorney to a service organization and [the] organization customarily reviews any type of rating action prior to reference of the case to the authorization unit, the rating decision should [not ordinarily] be signed by the board [before] review by the service organization.

[b. Make any changes in the rating following review by the service organization under the rules in paragraph 49.04a. If changes are made after the review, call the changes to the service organization's attention. If a new rating is required, permit the service organization to review the rating.

c. If requested, provide any person or organization holding a power of attorney with a photocopy of the rating decision.]

45.14 APPEALS

The responsibility of the rating board and the procedures to be followed in connection with appellate matters are contained in chapter 18. When the decision of the Board of Veterans Appeals constitutes a reversal, a new rating decision will be prepared in conformity with the findings of the appellate board. (See par. 18.28.)

45.15 ISSUANCE OF RATING SCHEDULES

a. **Definition.** The term "rating schedule" when used in this manual refers to the 1945 Schedule for Rating Disabilities, Loose-Leaf Edition, only. Any other rating schedule will be identified by its full title.

b. **Distribution.** Copies of the rating schedule will be issued by Adjudication Officers to Adjudication Division employees which will include Assistant Adjudication Officers, section chiefs, rating specialists and adjudicators. Copies will also be issued to other persons whose duties actually require the regular use of the schedule. These will include regional office Directors, Center Directors; Chief Medical Officers; Directors of Outpatient Services; Clinic Directors; Chiefs of Dental Services; Veterans Services Officers and selected Veterans Benefits Counselors; also accredited, paid, full-time representatives of veterans' and other cooperating organizations actually representing veterans before the board.

c. **Receipts for Schedules Not Required.** Maintenance of receipts or other records of accountability for rating schedules is not required. The rating schedule has been incorporated in chapter 1, part 4 of the Code of Federal Regulations. It may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, by citing CFR, title 38.

d. **Retention of Rating Schedules on Transfer.** Employees and representatives transferring to other stations in positions requiring use of rating schedules will be permitted to take their personal copy of the schedule to the new station.

e. **Requisitions.** Standard requisition forms will be used in connection with rating schedules.

f. **Destruction of Unserviceable Schedules.** Unserviceable rating schedules may be destroyed as obsolete at the local station under authority of Records Control Schedule VB-1, part I.

CHAPTER 46. RATING [DECISIONS]

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CHAPTER 46. RATING [DECISIONS]

46.01 GENERAL

a. **Initial Review.** The issues over which the rating board has original jurisdiction are discussed in paragraph 45.09. Cases received by the board will be reviewed to determine whether there is a proper claim and an issue within the board's jurisdiction before a rating decision is rendered.

b. **Board Deliberation.** Preliminary considerations will include the existence of proper service, nonexistence of statutory or regulatory bars and the sufficiency of evidence necessary for resolution of all issues. After group deliberation and reconciliation of individual opinions, the board will record its decision on VA Form 21-6796, Rating Decision, or VA Form 21-6789, Deferred or Confirmed Rating Decision. If differences of opinion cannot be resolved, a dissenting opinion may be rendered. (See par. 45.06.) All evidence pertinent to the rating decision will be retained in the claims folder. [(See par. 1.09l re nonretention of records referring to alcohol abuse, drug abuse or sickle cell anemia.)]

46.02 DISPOSITION OF DISABILITIES NOTED OR CLAIMED

a. [ ] **Compensation Ratings.** All disabilities claimed will be given consideration as to service connection and [be coded as a disability rating on VA Form 21-6796.] (See par. 49.18 et seq.) [Any additional] disabilities [noted] will [be] coded, except:

(1) Acute transitory conditions that leave no residuals.

(2) Noncompensable residuals of venereal disease.

(3) Disabilities noted only on the induction examination, or conditions recorded by history only.

[(4) Disabilities found by authorization to have not been incurred "in line of duty" (par. 14.03).

b. **Pension Ratings.** Code all claimed or noted disabilities on VA Form 21-6796 and show the percent of disablement for each unless the disabilities have been held to be due to the claimant's own willful misconduct by Administrative Decision. (See par. 14.04 and app. A rating code 14.)

c. **Supplemental Ratings**

(1) All previously rated service-connected and nonservice-connected disabilities must be brought forward on supplemental ratings on VA Form 21-6796. The current and, if in order, future percentage evaluations with their effective dates are required for all service-connected disabilities. (See par. 46.02b re the coding for pension ratings and par. 49.19b(1) re extent of historical evaluations.)

(2) Current rating procedure calls for the rating of disabilities not shown by the evidence of record, which are constitutional or developmental abnormalities, or not found on the last examination, under rating code 8. Explain the reason for disallowance in the discussion portion of the rating decision. Since code's 8 are to be brought forward on subsequent ratings, provide a brief explanation for the disallowance following the code 8 in the conclusion portion of the rating decision.

Example: The veteran claimed service connection for a sprain of the right knee and for gastrointestinal disturbance. We are denying service connection for the sprain as not shown by the evidence of record, and for the gastrointestinal disturbance as not found on the last examination. Explain the reasons for disallowance in the discussion portion of the rating, and complete the conclusion portion of the rating as follows:

	8. NSC VE
5299	Right knee sprain (not shown)
7399	GI disturbance (not found last exam)

(a) Disposition of Prior Code 35 (Not Found in Last Exam). If a case is rerated where conditions were previously rated under code 35, and disallowance is still in order, bring it forward under code 8 as shown above.

(b) Disposition of Prior Code 36 (Not Shown by the Evidence of Record). If a case is rerated where conditions were previously rated under code 36, and disallowance is still in order, bring it forward under code 8 as shown above.

(c) Disposition of Prior Code 13 (Constitutional or Developmental Abnormality Not a Disability Under the Law). If a case is rerated where conditions were previously rated under code 13, and disallowance is still in order, bring it forward under code 8 followed by the parenthetical phrase (constitutional or developmental abnormality).

d.] **Reconsiderations By Rating Board.** In finally disallowed claims or other final rating decisions, any communication from a claimant or his [or her] representative furnishing new and material evidence establishing a new factual basis constitutes a claim requiring reconsideration. Unless a specific claim is required, evidence showing entitlement to increased benefits will serve as a claim [(38 CFR 3.157).] If the record contains any information that the veteran believes a condition is related to service or to another service-connected disability, it becomes a claim requiring [ ] rating and notification of [the] right of appeal in the event of an adverse decision. (See ch. 27.)

(1) In the absence of a [ ] claim for service connection, a [ ] rating is not required for the disposition of chronic diseases (38 U.S.C. 312) initially manifested many years after discharge [ ] except for diseases common to prisoners of war [(38 CFR 3.309(c).)] In cases of veterans with more recent service, the record must be closely examined for early related symptoms or manifestations within the presumptive period which might be considered a potential basis for service connection. When such symptoms or manifestations are found, [a] rating [ ] is required to establish or deny service connection.

(2) [A disability] rating [on VA Form 21-6796] is not required (unless there is a specific claim) for:

(a) Acute and transitory conditions.

(b) Disabilities noted for the first time that clearly and definitely could not be related to service (examples: postservice accident, poliomyelitis, flat feet, etc.).

46.03 RATING OF DISABILITIES NOT SHOWN BY EXAMINATION OR EVIDENCE

a. **General.** [In the absence of current medical evidence, a claim will not be denied because the disability is not shown by the evidence of record or because the condition was not found on the last examination. Order a physical examination if the evidence is not adequate for rating purposes but otherwise indicates that there is a reasonable probability of a valid claim.]

b. **Acute Disease or Injury.** Many claimants allege acute disease or injury [ ] without any residuals at discharge (e.g., nasopharyngitis, pneumonia, contusion, or the like). Allegation of such conditions does not establish reasonable probability of a valid claim and does not warrant reference to the rating board to determine necessity for examination.

(1) Disallowance action will be accomplished by the authorization unit without reference to the rating board (par. 22.04).

(2) If evidence purporting to establish residual disability is received, the case will be referred to the rating board for rating action.

c. **Rating Code 8.** The rating board will dispose of any claim by ordering an examination, when warranted, or by use of rating code "8".

[(1)] If, in the opinion of the rating board, the evidence does not establish the reasonable probability of ascertainable residual disability, but the condition was recorded in service, the claim will be disposed of by use of code "8" [and show the reason in parenthesis.]

[(2)] If the disability alleged is not shown by the evidence submitted by the veteran, service records or elsewhere, disposition will be by rating code "8" [and show the reason in parenthesis.]

d. Recurring Conditions

(1) If a [ ] condition recurs [following disallowance as not being found on the last examination] and is [diagnosed] on subsequent VA examinations, consideration will be given to any evidence of:

(a) Chronicity in service, or

(b) Continuity between recorded episodes; or

(c) Whether the condition claimed is the proximate result of the condition in service or an intervening cause.

(2) Disposition of the condition, whether or not service connection is granted, will be shown on the rating sheet by use of the proper entitlement or denial code.

[ ]

46.04 CONFIRMED RATINGS

a. General. VA Form 21-6789, employed as a confirmed rating decision, is for use in any disability case when:

(1) The evidence is cumulative in nature and is not new and material, or

(2) An examination report or hospital summary discloses no change in the evaluation or diagnostic code previously assigned to a service-connected disability and there is no [other] pending [ ] rating issue [such as [a claim for] service connection, [ ] disability pension, [ ] aid and attendance or housebound benefits]; and

(3) A [disability] rating decision is not required under paragraph 46.02.

b. Identification of Issue and Disability. A confirmed rating on VA Form 21-6789 must identify the disabilities being evaluated as well as the issue. It also must state specifically the basis for a decision holding that evidence is cumulative or not new and material.

c. Preparation of Confirmed Rating

(1) Three members of the rating board (par. 45.05) will be responsible for completion of VA Form 21-6789 in accordance with the following:

Item	Description	Completion Required
1	Type of Claim	All
2	File Number	All
3	Name of Veteran	All
5	Date of Last Examination	All
6	Date of Rating	All
9	Narrative	All
10	Date of Prior Formal Rating	All
11	Decision on Examination	All
12	Future Date Controls	As Applicable
13	Claimant Representative	All
14	Rating Board Number	All
15	Station Number	All

(2) The narrative (see par. 49.17) will include:

(a) J (Jurisdiction): The reason(s) the case is before the board and the pertinent dates. (See subpar. a above.)

(b) I (Issue): The specific disabilities in issue will be stated. (See subpar. b above.)

(c) F/D (Facts/Discussion): All pertinent facts will be succinctly stated followed by the boards rationale for confirming the prior formal rating.

(3) The rating will be typed or legibly written with indelible ink.

d. Notification of Decision. All decisions reflected by a confirmed rating will be referred to the Authorization activity for notification to the veteran as provided in paragraph [16.09.]

46.05 THE DEFERRED RATING

a. When and How Prepared. When affirmative action, including a partial decision under the criteria of paragraph 46.06, can be taken by the rating board on any disability, such rating action should [not] be deferred. When it is not possible to take affirmative action on any phase of a claim and deferment is necessary for the purpose of development (including field examination, service records, etc.), VA Form 21-6789, original only, will be completed as provided below.

(1) One member of the rating board will be responsible for completion of VA Form 21-6789 in accordance with the following:

Item	Description	Completion Required
	Type of Claim	All
2	File Number	All
3	Name of Veteran	All
6	Date of Rating	All
7	Reason(s) for Deferral	All
8	Explanation for Items Checked	All
13	Claimant Representative	All
14	Rating Board Number	All
15	Station Number	All

(2) The following items are of particular significance:

(a) A full and complete explanation, to include pertinent dates, for the deferral in item 8.

(b) The signature of only one rating specialist.

(c) [The rating will be typed or legibly written with indelible ink.]

b. When Not Required. If the only development required is a request on VA Form 21-2507 for physical examination, VA Form 21-6789 will not be prepared. The file copy of the VA Form 21-2507 (initialed by the requesting board member) will suffice [(par. 55.05).]

c. Future Controls. The rating specialist also will determine whether any change should be made in a [control for a] routine future examination. [ ] The scheduled date of a future [control] may be canceled or extended by [completing] the "Future Date Control" on the rating form and [referring the rating to the Authorization activity for processing via the DIAR command.]

46.06 PARTIAL RATING DECISIONS

a. **General.** The rating board may make a rating decision if the record contains sufficient evidence to grant benefits. The board will cite issues which must be deferred at the end of the rating using code 38. (See app. A.)

(1) In deferred ratings, establish service connection for compensable disabilities, if possible, even though we must defer the issue of service connection for other disabilities or the issue of a higher evaluation.

(2) If we receive a certification sufficient for a rating under paragraph 28, 29, or 30 (see par. 25.22 and ch. 53), make the increased evaluation immediately, even though other issue(s) may require deferral.

b. **Improper Use of Partial Rating**

(1) It is improper, in a disability case, to render a rating decision denying service connection for some minor disability when the principal basis of the claim cannot be considered, pending examination or other development.

(2) It is improper, in a death case, to render a rating decision denying service connection for any disabilities when action is being deferred as to service connection for another disability as the cause of death. However, it is proper to render a rating decision granting service connection for the cause of discharge in a case when there was less than 90 days' service while deferring a determination as to whether death was due to a service-connected disability.

46.07 RATING ON APPEALS

See paragraph 18.16a.

46.08 INFERRED ISSUES

Even though not specifically placed at issue by the claimant, rating boards will reflect consideration of the following ancillary benefits in their decision:

a. **Special Monthly Compensation.** Whenever there is a high degree of disability in an extremity or sensory organ, consideration will be given to entitlement to SMC and this consideration will be covered in the rating decision. If SMC is not granted, state the reason(s) in the discussion portion of the rating.

b. **Retroactive Award of Disability Pension.** If a veteran did not request consideration for retroactive payment, and the rating board determines that a qualifying disability may exist, the rating board shall request authorization to advise the claimant that retroactive benefits may be payable.

c. **Aid and Attendance or Housebound Allowance.** Whenever there is a 100 percent evaluation granted, consideration should be accorded to entitlement to aid and attendance. Whenever entitlement to aid and attendance is specifically denied, the rating decision should show consideration of entitlement to housebound benefits. In pension cases use rating code 19 when both are denied.

d. **Dependents Educational Assistance—38 U.S.C. Chapter 35**

(1) **Total Disability Ratings.** Whenever a schedular total evaluation is granted for service-connected disability and there are eligible or potentially eligible claimants for DEA, the rating board will enter below the coded ratings the statement: "Basic eligibility to benefits under 38 U.S.C. chapter 35 is established from (date)" or "Basic eligibility to benefits under 38 U.S.C. chapter 35 is established except as to permanency."

(2) **Permanency Subsequently Established.** When permanency is subsequently established, this fact will be reflected by appropriate rating action citing the allowance statement contained in subparagraph (1) above. The effective date of chapter 35 entitlement will be:

(a) Date of examination which established permanency; or

(b) Date or receipt of new evidence requiring cancellation of future examination; or

(c) Date of longitudinal review of the claims folder when future examination is canceled.

(3) **Death Ratings.** In all death ratings, when the issue of service connection for death is resolved and there are eligible or potentially eligible claimants for DEA, the rating board will enter in the narrative below the coded rating a concluding statement: "Basic eligibility to benefits under 38 U.S.C. chapter 35 (is) (is not) established."

e. **Psychosis—38 U.S.C. 602.** Whenever a rating board denies a claim for service connection for a psychosis based on World War II, Korean conflict or Vietnam era service, the rating board will determine service connection, under 38 U.S.C. 602. Code the rating to reflect the decision as follows:

(1) **Grant.** "48. Active Psychosis—S.C. for treatment purposes only;" or

(2) **Denial.** "49. Active Psychosis—Not S.C.; 38 U.S.C. 602."

f. **Extra-Schedular Consideration Under 38 CFR 3.321(b)(2).** Whenever a pension claim does not meet the schedular requirements for permanent and total disability, the issue of extra-schedular consideration should be raised and disposed of either by recommending approval to the Adjudication Officer or indicating in the discussion section that consideration was given under 38 CFR 3.321(b)(2).

g. **Specially Adapted Housing.** Whenever a disability rating initially establishes disability evaluations meeting the requirements of 38 CFR 3.809 and 3.809(a), dispose of the issue of entitlement to specially adapted housing using rating code 41 or 41A and the applicable paragraph as found in appendix A.

[h. **Automobile and Adaptive Equipment.** Whenever a disability rating initially establishes entitlement under 38 U.S.C. 1901 (38 CFR 3.808(b)) or 1902(b)(2), dispose of the issue of entitlement to automobile *and* adaptive equipment or adaptive equipment *only*. The rating board will enter the appropriate rating code 61, 61A, or 62 as found in appendix A.]

46.09 SUBMISSION FOR EXTRA-SCHEDULAR CONSIDERATION

a. **Compensation.** Whenever the schedular evaluations are considered to be inadequate for any disability(ies) or a total rating cannot be assigned because the service-connected disabilities do not meet the minimum schedular requirements of paragraph 16 of the rating schedule, a memorandum, to accompany the claims folder, will be prepared for submission to Central Office [(214D)]. The memorandum will be prepared to provide:

(1) A clear and succinct statement of the facts including medical and lay evidence of symptoms.

(2) A discussion of the facts with relevant laws and regulations.

(3) The issue or issues to be resolved and the recommended evaluation. (See 38 CFR 3.321(b)(1) and par. 49.23b(1)(b).)

b. **Pension.** The Adjudication Officer may approve pension on an extra-schedular basis without submission to Central Office 38 CFR 3.321(b)(2) (Also see par. 49.23b(1)(g).)

46.10 RATINGS UNDER 38 CFR 3.105(a) GRANTING RETROACTIVE MONETARY BENEFITS

a. **Retroactive Monetary Benefits for 5 Years or Less.** The rating board shall prepare a rating for the approval of the Adjudication Officer which grants monetary benefits under 38 CFR 3.105(a) for 5 years or less.

b. **Retroactive Monetary Benefits for More Than 5 Years.** If the rating board wishes to grant monetary benefits retroactively under 38 CFR 3.105(a) for a continuous period of more than 5 years, a memorandum shall be prepared for the signature of the Director (or designee not lower than the Adjudication Officer) addressed to the Director, Compensation and Pension Service [(214D)]. The subject of the memorandum will be "Recommendation to grant retroactive monetary benefits for a continuous period of over 5 years." Set forth the following in the memorandum:

(1) A clear and succinct statement of the facts.

(2) A discussion of the facts with citations of relevant statutes and regulations.

(3) The issue(s) to be resolved and the recommended evaluation(s) and effective date(s).

Send the memorandum together with the claims folder to Central Office [(214D)]. Do not prepare and send a proposed rating to Central Office. Take final rating action only after receiving the decision of the Director, Compensation and Pension Service.

c. **Board of Veterans Appeals Decision.** These procedures are not for application when the rating is the result of a Board of Veterans Appeals decision.

CHAPTER 47. MEMORANDUM RATING DECISIONS

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CHAPTER 47. MEMORANDUM RATING DECISIONS

47.01 GENERAL

Memorandum rating decisions will be prepared by the rating board with determinations relating to basic entitlement information and requests made by other services and agencies. They will not be made on an issue previously resolved in a formal rating decision.

a. **Claim for Service Connection.** A formal application for disability or death benefits is normally not required before a memorandum decision regarding requests for basic entitlement information is prepared except for the following. (See also par. 34.02.)

(1) Automobile and adaptive equipment for other than persons in service. (See pars. 30.06 and 47.11.)

(2) Specially adapted housing. (See pars. 30.07 and 47.12.)

(3) Housing preference. (See par. 13.03.)

(4) Claims affecting RSFPP [(Retired Servicemen's Family Protection Plan)] and SBP [(Survivor Benefit Plan)]. (See par. 34.02b(3) and (4).)

(5) Civil service disability preference. (See par. 13.01.)

b. **Decisions Final.** Memorandum decisions have the same attributes of finality on the issues resolved as [Disability or Death] ratings and are binding on all subsequent decisions unless reversed on appeal or under 38 CFR 3.105 (a) or (b).

c. **Two or More Requests.** When there are two or more requests for different basic entitlement information, separate memorandum rating decisions will be prepared, unless otherwise provided.

d. **[Disability or Death] Ratings.** When a formal application for compensation or pension has been filed, the rating action will be in the form of a completed ([disability or death]) rating, and not a memorandum rating. [Disability or death] rating decisions will cover requests for basic entitlement information unless otherwise provided. For example, a claim for compensation and a basic entitlement request for hospital or outpatient treatment purposes would be covered in the same [disability] rating, but a basic entitlement request for specially adapted housing would require a separate decision (par. 47.12).

47.02 TYPES OF MEMORANDUM RATING DECISIONS

The following are the most frequent types of memorandum ratings, using the legends shown:

a. FOR HOSPITAL OR OUTPATIENT TREATMENT PURPOSES. (See pars. 30.02c and 30.04.)

b. FOR DENTAL TREATMENT PURPOSES. (See ch. 51.)

c. FOR VOCATIONAL REHABILITATION PURPOSES. (See pars. 30.10 and 47.05.)

d. FOR PERMANENT INCAPACITY FOR SELF-SUPPORT DUE TO PHYSICAL OR MENTAL DISABILITY OF A CHILD. (See 38 CFR 3.315(a) and 3.356.)

e. FOR LOAN GUARANTY PURPOSES. (See 38 CFR 3.315(b) and pars. 30.13 and 47.15.)

f. FOR UNEMPLOYMENT COMPENSATION PURPOSES. (See par. 13.21.)

g. FOR SANITY OF BENEFICIARY IN REGARD TO HOMICIDE. (See par. 14.09d.)

h. FOR INSURANCE PURPOSES. (See 38 CFR 3.355 and pars. 30.09, 34.04, 47.08 and 56.18.)

i. FOR VETERAN'S CIVIL SERVICE PREFERENCE PURPOSES. (See par. 13.01 and 47.07.)

j. FOR PURPOSES OF APPOINTMENT TO A SERVICE ACADEMY. (See par. 13.05.)

k. FOR SPECIALLY ADAPTED HOUSING PURPOSES. (See pars. 30.07 and 47.12.)

l. FOR PURPOSES OF SECTION 305, WORLD WAR VETERANS' ACT OF 1924. (See 38 U.S.C. 788.)

m. FOR DEATH GRATUITY PURPOSES. (See 38 U.S.C. 423 and par. 13.06.)

n. FOR PURPOSES OF 38 U.S.C. 602 – PSYCHOSIS. (See par. 47.09.)

o. FOR (SPOUSE'S) (SURVIVING SPOUSES) (PARENT'S) ENTITLEMENT TO AID AND ATTENDANCE, OR FOR SURVIVING SPOUSE'S ENTITLEMENT TO HOUSEBOUND. (See par. 47.06.)

p. FOR THE PURPOSE OF DEPENDENTS' EDUCATIONAL ASSISTANCE UNDER 38 U.S.C. CH. 35. (See pars. 47.14 and 56.18c.)

q. FOR PURPOSES OF 38 U.S.C. CH. 39—ENTITLEMENT TO AUTOMOBILE AND ADAPTIVE EQUIPMENT. (See pars. 30.06 and 47.11.)

r. FOR THE PURPOSE OF DISCHARGE OF LIABILITY FOR EDUCATIONAL LOAN. (See par. 47.13.)

s. FOR THE DETERMINATION OF INSANITY OF VETERAN AFFECTING DISCHARGE. (See pars. 14.05 and 47.10.)

t. FOR PURPOSES OF 38 U.S.C. 109(c)—POLISH AND CZECHOSLOVAKIAN ARMED FORCES. (See par. 47.16.)

u. FOR PURPOSES OF EXTENDED DELIMITING DATES—CH. 34 AND CH. 35. (See par. 47.17.)

v. FOR MEDICAL CARE ELIGIBILITY UNDER CHAPTER 17, TITLE 38, UNITED STATES CODE (PUBLIC LAW 95-126).

w. ELIGIBILITY DETERMINATION TO ESTABLISH SERVICE-CONNECTED DEATH UNDER THE PROVISIONS OF SECTION 156, PUBLIC LAW 97-377. (See par. 40.29.)

47.03 PREPARATION OF MEMORANDUM RATINGS

a. **General.** All memorandum ratings will be prepared on VA Form 21-6796, Rating Decision, or, for dental treatment purposes only, on VA Form 21-564d, Dental Rating Sheet. They will follow the format provided for disability ratings in chapter 49, except since they are not for [Target entry], only the items indicated below need be completed. (See also ch. 56, subch. III, re death ratings.)

[b. **Responsibility of the Rating Board.** The rating board will complete the Memorandum Rating Decision, VA Form 21-6796, in accordance with the following:

Block No.	Item	See Paragraph
1	RO Number	49.06g
2	Type of Rating (Memorandum)	49.06i
4	Veterans File Number	49.07
5	Initials and Surname of Veteran	49.09
6	Copy to	49.06a
7	Veteran's Social Security No. (if different from block 2)	49.08
8	Date of Claim	1.15(c) (7) and 49.06b
9	Date of This Rating	49.06e
11	Date of Death (as applicable)	49.06d
12	Active Duty	49.10a
15	Date of Last Exam (as applicable)	49.06c
23	Narrative	
	Legend	47.02
	Jurisdiction	49.17d
	Issue	49.17e
	Facts	49.17f
	Discussion (as applicable)	49.17g
	Conclusion	47.05 and 47.07
27	P/A (Power of Attorney)	45.13
	Address (as applicable)	47.08c
	Signatures	45.05
	Chairperson	45.05
28	Rating Board Number	49.06g]

47.04 STATE BONUS OR TAX EXEMPTION

No memorandum rating decision will be prepared solely on requests for determinations by appropriate State officials or other interested persons as to service connection for disability or cause of death. (See par. 13.19 re the need for claim by the veteran or next of kin, the requirement for a formal rating and reply to the appropriate officials.)

47.05 VOCATIONAL REHABILITATION

a. **General.** If a claim for vocational rehabilitation under 38 U.S.C. ch. 31 by a veteran or a person in active service in a military hospital awaiting discharge has been received and determination of entitlement to vocational rehabilitation is required, a memorandum rating will be prepared (in duplicate) (par. 30.10). The copy of the memorandum rating, attached to VA Form [28-1900, Disabled Veterans Application for Vocational Rehabilitation,] will be forwarded to the C&R activity. Other basic entitlement decisions will be made on separate memorandum rating(s) if otherwise indicated.

(1) **Entitlement Criteria.** Entitlement based on disability due to service on or after September 16, 1940 requires a *compensable* service-connected evaluation.

NOTE: A statutory award under 38 U.S.C. 314(k), or former subsection (q) meets the disability condition even though the disability is rated 0 percent.

(2) **Examination.** In the absence of a current physical examination, the evaluation will be based on static disabilities. The absence of a current examination will be noted in the body of the rating for the benefit of the vocational counselor. When, however, a minimum 10 percent evaluation may not be assigned in any case on the basis of static disabilities, a physical examination or hospital report may be requested if a reasonable probability of service-connected disablement is shown by the evidence of record.

NOTE: If military hospital records are borrowed for this purpose, essential portions will be duplicated for retention in the claims folder and the originals returned to the hospital.

(3) **Legend.** The legend will be "FOR VOCATIONAL REHABILITATION PURPOSES."

(4) **Conclusion.** The diagnostic code of the major disability will be shown in the rating conclusion. Evaluation of service-connected disabilities may be shown as:

(a) "10 percent or more";

(b) "Entitled to SMC under 38 U.S.C. 314(k) or (q)"; or

(c) [ ] "A compensable evaluation not established."

47.06 AID AND ATTENDANCE ALLOWANCE FOR SPOUSES, SURVIVING SPOUSES AND PARENTS AND HOUSEBOUND BENEFITS FOR SURVIVING SPOUSES ENTITLED TO DIC OR IMPROVED PENSION

a. **General.** Surviving spouses and parents who are receiving or entitled to receive death pension (including protected pension and old war service pension) or dependency and indemnity compensation or death compensation and spouses of veterans with a combined evaluation of 30 percent or more for service-connected conditions may qualify for aid and attendance allowance under [38 CFR 3.351.] Surviving spouses who are receiving or entitled to receive dependency and indemnity compensation may qualify for the housebound rate under [38 CFR 3.351(d).] Any communication from the claimants or their accredited representative indicating a desire for increased benefits because of disability or nursing home patient status will be accepted as a claim for housebound or aid and attendance, as applicable.

b. **Development.** Examinations by the VA are not generally contemplated (but see par. 55.01d) and determinations of a claimant's need for aid and attendance or housebound will be based, when possible, on medical reports and findings by private physicians or non-VA facilities. Statements by private physicians meeting the requirements of [38 CFR 3.326(d)] are acceptable for rating purposes. Also, statements by responsible officials of nursing homes are acceptable without need for physical examination to establish patient status. (See [38 CFR 3.351(c)(2).])

c. **Rating Required**

(1) **General.** A memorandum rating is required when entitlement to aid and attendance allowance may not be based on nursing home patient status. The criteria provided in [38 CFR 3.351(c)(1) and (2)] will be applied in determining the need for aid and attendance. Other basic issues will be decided on separate memorandum rating(s).

(2) **Legend.** The legend will be "FOR (SPOUSE'S) (SURVIVING SPOUSES) (PARENT'S) ENTITLEMENT TO AID AND ATTENDANCE OR FOR SURVIVING SPOUSE'S ENTITLEMENT TO HOUSEBOUND."

(3) **Conclusion.** [The conclusion will show either dictator's rating code 46, 46A, 47 or 47A and their applicable paragraphs as found in appendix A.]

d. **Authorization Without Rating.** When evidence establishes the claimant's nursing home patient status, award action will be taken authorizing aid and attendance allowance without a rating. (See par. 24.15 and 38.03.) Housebound is not subject to presumption and is payable only as a result of a rating.

(1) **Discharge From Hospital to Nursing Home.** If a period of hospitalization results in a discharge within 90 days to a nursing home as a patient, aid and attendance may be authorized without a rating from the date of such hospital admission, subject to the effective date provision of [38 CFR 3.402(c) or 3.404.]

(2) **Discharge From Nursing Home.** If the claimant is discharged from a nursing home, procedures outlined in paragraph 24.15d for disability cases will be for equal application in death cases.

47.07 VETERAN'S CIVIL SERVICE PREFERENCE

NOTE: Before a memorandum rating for veteran's civil service preference may be prepared, an application for compensation and/or pension and a [Disability] rating disposing of this claim must be of record. (See also par. 13.01.)

a. **General.** A memorandum rating is only necessary when there is a rating previously made in which there are no compensable disabilities. An evaluation of "less than 10%" may be made for combat incurred noncompensable disabilities, but for non-combat disabilities, there must be ascertainable residuals before "less than 10%" evaluation may be assigned. Other basic entitlement information will be decided on separate memorandum rating(s).

(1) **No Disability Rating of Record.** If there is no disability rating of record and no claim for compensation or pension of record, return the claims folder to authorization requesting the veteran be informed that no certificate can be furnished unless a claim for either compensation or pension is filed.

(2) **Claim Received.** If a claim for compensation or pension is received, prepare a disability rating disposing of the claimed issues and a memoradum rating for civil service preference, if necessary.

b. **Legend.** The legend is "FOR VETERANS CIVIL SERVICE PREFERENCE PURPOSES."

c. **Conclusion.** In the conclusion, show the diagnostic code, diagnosis and an evaluation of either:

(1) "Less than 10 percent"; or

(2) "The noncompensable service-connected disabilities have no ascertainable residuals."

47.08 INSURANCE PURPOSES

a. **When Rating is Required.** A memorandum rating is required on receipt of [an E-Mail Request or] VA Form 29-4373, Request for Disability Compensation Rating for Insurance Purposes--Government Life Insurance, referred by the Insurance center and when no rating has been made on or after April 25, 1951, or if made, did not dispose of all conditions shown as reported on the insurance application (par. 30.09). If the request lists additional disabilities, a current rating disposition will be made of each. Other non-insurance issue(s) will be decided on separate memorandum rating(s). (See also pars. 49.06a(2) [and 30.09]) re copies of ratings on claims for disability compensation. [If a rating determination is required, see paragraph 30.09 re regional office jurisdiction over claims folders.] The Insurance Center normally will request rating board determination when:

(1) The veteran has applied for RH or ARH (Gratuitous) Insurance under 38 U.S.C. 722(a) or a posthumous determination is in order under 38 U.S.C. 722(b). (See pars. 34.04 and 56.18a.)

(2) A veteran requests waiver of premiums under 38 U.S.C. 712 because of total disability which has continued for 6 or more consecutive months.

(3) There is need for determination of Testamentary Capacity for Insurance purposes (38 CFR 3.355). (See Par. 56.18b.)

b. **Rating Criteria.** The provisions of 38 CFR 3.300 series will be applied in determining the rating criteria for insurance purposes with special emphasis placed on the following:

(1) **Coma Incident to the Terminal State.** Brief periods of coma incident to the terminal state are commonly encountered. In the absence of other manifestations of mental incapacity to contract, manage personal affairs, or disburse funds, such brief periods of coma are insufficient to support a rating of mental incompetency under section 722(b). The fact that service connection is established for the cause of death does not carry with it the implication that the veteran was mentally incompetent at the time of death or at any time during the critical period for purposes of section 722(b).

(2) **Suicide.** A finding in a death rating that a veteran was of unsound mind at the time of suicide under the provisions of 38 CFR 3.302 does not mean the veteran was mentally incompetent for purposes of section 722(b). A rating under that section of the law is made on all the evidence of record, and any rating of mental incompetency must be supported by affirmative evidence, without benefit of presumption. (See Administrator's Decision 973 re interpretation of the term "mentally incompetent.")

(3) **Testamentary Capacity.** The criteria set forth in 38 CFR 3.355 is used for rating board determinations if questions regarding testamentary capacity of the insured veteran to execute designations or changes of beneficiary and/or designations or changes of options are involved.

c. **Preparation of Rating.** Prepare the memorandum rating in duplicate in accordance with paragraph 47.03 with special emphasis on:

(1) **Address.** Show the veteran's address including ZIP Code in the upper right corner of the narrative section of the rating decision.

(2) **Legend(s).** Acceptable legends are:

(a) "FOR THE PURPOSE OF [ ] INSURANCE UNDER 38 U.S.C. 722," or

(b) "FOR WAIVER OF INSURANCE PREMIUMS UNDER 38 U.S.C. 712," or

(c) "FOR DETERMINATION AS TO TESTAMENTARY CAPACITY FOR INSURANCE PURPOSES ONLY."

(3) **Discussion.** Listed conditions on VA Form 29–4373, Request for Disability Compensation Rating for Insurance Purposes-Government Life Insurance, which are considered symptoms of a rated disability are disposed of by a statement to this effect in the "Discussion [".]

(4) **Conclusion.** Show entitlement codes and evaluations in the conclusion.

47.09 PURPOSES OF 38 U.S.C. 602-PSYCHOSIS

a. **Request for Determination.** All requests for determination of service connection under 38 U.S.C. 602 are received on VA Form 10–7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action, accompanied by a copy of completed VA Form 10–10, Application for Medical Benefits, (or 10–10r, Reapplication for Medical Benefits,) and VA Form 10–10m, Medical Certificate, and any other available professional report submitted with or developed in conjunction with the application for hospital or outpatient treatment.

(1) **No Prior Decision.** In the absence of a prior decision, the Authorization Unit will [obtain] all pertinent service and other available medical records for the ratings board's consideration. If there is no claim for service-connected compensation or record, record the determination of the board as a memorandum rating; otherwise, make a formal rating determination on VA Form 21–6796 as provided in paragraph 46.08e. Reflect this determination in all subsequent formal ratings following other coded conclusions.

(2) **Prior Decision of Record.** If a determination is already of record, the authorization activity provides the requested information. (See par. 30.02.)

b. **Purpose of 38 U.S.C. 602.** Determination of service connection under 38 U.S.C. 602 is solely for the purpose of providing eligibility for hospital and medical treatment (including outpatient treatment) for veterans of WWII, Korean conflict or Vietnam era service who develop an active psychosis during or within 2 years from the date of separation (under other than dishonorable conditions) from such service or within 2 years of the end of the war period, whichever is earlier. It is not necessary for the veteran to have had 90 days service to qualify.

c. **Application of Presumption.** The law provides a conclusive presumption tantamount to a presumption of soundness which is not only applicable to the 2-year period following discharge but also qualifies veterans with a diagnosis of active psychosis during service despite a history of preservice existence. (See par. 55.01 [ ] re requesting [a] physical examination.)

(1) **Misconduct Etiology.** The presumption is equally applicable to psychosis of misconduct etiology.

(2) **Criteria.** Existing criteria for determining service connection for disability compensation purposes is in no way affected. (See 38 CFR 3.307.)

d. **Rating Preparation**

(1) **Legend.** The legend is "FOR THE PURPOSES OF 38 U.S.C. 602-PSYCHOSIS"

(2) **Conclusion.** Show an affirmative decision as:

(a) "48. Active Psychosis—SC for treatment purposes only."

(b) "49. Active Psychosis—Not SC; 38 U.S.C. 602."

e. **Failure To Report for Examination.** When the rating board has determined that VA examination is essential and the veteran fails to report for the scheduled examination, the Authorization activity will indicate in "Remarks" on VA Form 10-7131 the fact that service connection has not been established by entry: "Active psychosis, 38 U.S.C. 602, NOT established. Veteran failed to report for examination."

47.10 INSANITY OF VETERAN AFFECTING DISCHARGE

a. **Board Jurisdiction.** Ordinarily, rating board will be required only when the Authorization activity, due to a specific allegation by the claimant or question raised by the evidence in file, requests a decision as to whether the veteran was insane at the time of commission of the offenses that resulted in a discharge which precludes entitlement to benefits (par. 14.05). In the absence of such allegation, the rating board may accept jurisdiction when the veteran had pronounced neuropsychiatric symptomatology near discharge or evidence of psychosis during service. This issue may be included with any issue in a formal decision, but not with other issues in a memorandum rating.

b. **Legend.** The legend will be "FOR THE DETERMINATION OF INSANITY AFFECTING DISCHARGE."

c. **Determination.** The test generally to be applied is whether, at the time of commission of the act(s), the veteran was laboring under such a defect of reason, from disease of mind or mental deficiency, as not to know or understand the nature of consequence of the act(s) or that what he or she was doing was wrong (38 CFR 3.354).

d. **If Found Insane.** If the board finds the veteran was insane at the time of commission of the offenses resulting in discharge, reflect such finding in the rating decision.

e. **If Found Sane.** If the board finds the veteran to have been sane at the time in question, a memorandum decision to that effect supported by the necessary explanation will be sufficient as to the particular period of service.

47.11 ENTITLEMENT TO AUTOMOBILE AND ADAPTIVE EQUIPMENT

a. **General.** Include a determination of entitlement to an automobile and adaptive equipment or for adaptive equipment only for a veteran with a disability rating decision. Prepare a memorandum rating only for claims by servicepersons or when prior rating decisions do not establish the existence of qualifying disability. (See also par. 30.06.)

b. **Rating Criteria.** The criteria for entitlement by all applicable claimants are set forth in 38 CFR 3.808(b) [(38 U.S.C. 1901) or 38 U.S.C. 1902(b)(2).]

c. **Rating Decision**

(1) **Legend.** The legend for the memorandum decision will be "FOR THE PURPOSE OF 38 U.S.C. Ch. 39 – ENTITLEMENT TO AUTOMOBILE AND ADAPTIVE EQUIPMENT OR FOR ADAPTIVE EQUIPMENT ONLY."

(2) **Facts.** The facts will fully describe all qualifying disabilities (including specification of left or right extremities) and will state the period of service in which the disability described was incurred or aggravated.

[(3) **Discussion.** If the claimant has qualifying disabilities, the discussion will contain the statement "Claimant has (insert all qualifying disabilities) (incurred in) (aggravated by) service."

(4) **Conclusion.** The conclusion will show the appropriate rating code 61, 61A, or 62 and the applicable paragraph as found in appendix A.]

47.12 ENTITLEMENT TO SPECIALLY ADAPTED HOUSING AND SPECIAL HOME ADAPTATION GRANT

a. **General.** A claim for specially adapted housing or special home adaptation grant on VA Form 26-4555, Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant (38 U.S.C. 801(a) or 801(b)),

will be referred to the rating board with the claims folder for consideration under both 38 U.S.C. 801(a) and 801(b) and determination of the greater benefit following the adjudicator's determination that the veteran has basic eligibility according to the criteria set forth in 38 CFR 3.809 or 3.809a (see also par. 30.07).

(1) Prepare a disability rating in any case in which the evidence demonstrates a change in the level of disability or if revised coding is required; i.e., disabilities previously rated under codes 35 or 36 that must be brought forward under code 8.

(2) Prepare a memorandum rating if no change is required in the coding of the rating.

(3) Prepare and deliver, within 10 days of receipt of VA Form 26-4555, Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, copies of specially adapted housing ratings to the Loan Guaranty Division.

b. **Examination Required—Specially Adapted Housing.** If the loan guaranty division cannot make a favorable decision as to medical feasibility, prepare a VA Form 21-2507, Request for Physical Examination, specifying that VA Form 10-4555b, Certificate of Medical Feasibility, shall be completed. When the veteran is hospitalized at a VA medical center, make the request for completion of VA Form 10-4555b on VA Form 10-7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action.

(1) If the veteran is hospitalized, request a current interim hospital summary along with completion of VA Form 10-4555b, to include complete medical findings.

(2) When warranted, completion of VA Form 10-2617, Self-Care Activities—Functional Evaluation, and VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, also may be requested to ascertain the extent of disability.

c. **Rating Criteria.** The entitlement criteria for specially adpated housing is set forth in 38 CFR 3.809(b) and for special home adaptation grant in 38 CFR 3.809a(b).

d. **Rating Decision.** On receipt of the report of examination or hospitalization and VA Form 10-4555b containing certification of medical feasibility for specially adapted housing, or if there is no reasonable probability of entitlement under 38 U.S.C. 801(a) and 801(b), the rating board will prepare a disability rating decision on VA Form 21-6796. See pars. 30.07 and 49.06.

(1) **Legend.** If entitlement is established under 38 U.S.C. 801(a) the legend will be "FOR SPECIALLY ADAPTED HOUSING PURPOSES." If entitlement is established under 38 U.S.C. 801(b), the legend will be "FOR SPECIAL HOME ADAPTATION GRANT PURPOSES."

(2) **Conclusion.** The conclusion will show either dictator's rating code 41, 41A, 42, or 42A and their applicable paragraphs as found in appendix A.

47.13 DISCHARGE OF LIABILITY FOR EDUCATIONAL LOAN

a. **General.** When the recipient of an educational loan under 38 U.S.C. 1798 dies or becomes permanently and totally disabled, under the provisions of that section of the law, the remaining liability for the loan will be discharged.

b. **Requests for Determinations.** The Finance activity, by memorandum, will request board determination for discharge of liability for permanent and total disability. This request should be accompanied by medical evidence, if submitted by the claimant.

c. **Development.** If the submitted evidence is insufficient for rating board action or no evidence has been submitted, the Authorization Unit will request evidence, medical or otherwise including dates of VA hospitalization and/or treatment from the claimant or next of kin. A 60-day pending issue file will be maintained to insure adequate control. When the requested evidence is received or at the end of the 60-day control period, the claims folder will be returned to the rating board for a determination based on the available evidence.

d. **Examinations.** The rating board will schedule an examination only when all other attempts to secure adequate medical evidence for rating purposes have failed.

e. **Rating Criteria.** The memorandum decision will be based on the criteria as set forth in 38 CFR 3.340 and 3.341. The claimants disability(ies) must:

(1) Combine to 100 percent; or

(2) If less than 100 percent are sufficient to produce unemployability in accordance with the requirements of paragraph 16 of the rating schedule.

f. **Rating Decision.** The rating will be prepared in duplicate. The copy of the rating will be forwarded to the Finance Division who will notify the claimant of the decision. This decision will not be made part of any other rating decision.

(1) **Legend.** The legend will be "FOR THE PURPOSE OF DISCHARGE OF LIABILITY FOR AN EDUCATIONAL LOAN."

(2) **Conclusion.** The concluding statement will be "Permanent and Total disability for discharge of liability (is)(is not) established."

47.14 DEPENDENTS EDUCATIONAL ASSISTANCE—38 U.S.C. CHAPTER 35

a. **General.** The rating board is generally responsible for determination of basic eligibility for a child, spouse and or surviving spouse(s) of veterans under 38 U.S.C. chapter 35.

(1) **Need for Memorandum Rating Determination.** Determination as to basic eligibility to DEA (Dependents Educational Assistance), will generally be included in a formal rating decision for disability or death benefit. (See par. 46.08d.) However, if there is no rating decision of record providing a specific decision as to eligibility to DEA, the authorization unit will refer the case to the rating board for a memorandum rating unless:

(a) Rating of record denies service connection for the cause of death and for total and permanent service-connected disability at time of death.

(b) Rating of record shows death was service connected (direct or presumptive).

(c) Rating of record shows service-connected *total* disability either schedular or due to individual unemployability, with no future examination scheduled.

(d) Rating of record denies service connection for all disabilities or service-connected disabilities are evaluated at less than 100 percent, or the 100 percent evaluation has been granted under the provisions of paragraph 28, 29 or 30 of the rating schedule. But NOTE: *Referral for rating decision will be required when there is reason to believe a schedular 100 percent evaluation may be in order.*

(e) Death is service connected without determination by a rating board in accordance with paragraph 34.05a.

(2) **Action by Rating Board.** The rating board will prepare a memorandum rating as provided under this paragraph, deciding whether there is entitlement to benefits under 38 U.S.C. chapter 35. Other issues requiring a memorandum rating will be decided on separate rating(s).

b. **Eligibility Criteria**

(1) The eligible person must derive entitlement from an honorably discharged veteran who served on active duty after April 21, 1898 who:

(a) Has a total service-connected disability permanent in nature; or

(b) Died as the result of a service-connected disability; or

(c) At the time of death had a permanent total service-connected disability even though no service-connected disability was the cause of death.

(2) Eligibility is otherwise derived from a service member, who as a member of the Armed Forces on active duty, has been listed for more than 90 days as:

(a) Missing in action; or

(b) Captured in line of duty by a hostile force; or

(c) Forcibly detained or interned in line of duty by a foreign government or power.

(3) **Non-Eligibility.** Disability or death under 38 U.S.C. 351 does not establish eligibility.

c. **Permanency.** Memorandum ratings will be required when the issue of permanency has not been disposed of in a prior decision. This will occur also when, following a rating establishing a total disability permanent in nature no payment was made, or if begun was properly discontinued (other than because of total recoupment; e.g., in severance pay cases) before the expiration of the 20-year period (e.g., because of election to receive retired pay) and the propriety of continuing that rating can be determined only by reexamination or other adequate medical evidence.

(1) **For Disability Cases.** The term "total disability permanent in nature" includes the following cases:

(a) When the disabilities are evaluated 100 percent under schedular evaluation (other than for par. 28, 29 or 30) or on the basis of individual unemployability based on impairment reasonably certain to continue throughout the lifetime of the veteran as determined in accordance with 38 CFR 3.340 and 3.341.

1. The above criteria is met in any case when the rating board has determined under 38 CFR 3.327(b)(2) that a disability is static and no future examination is required.

2. Individual Unemployability review under paragraph 55.08a is not considered a future examination.

NOTE. If a veteran was considered permanently and totally disabled immediately prior to schedular evaluation under one of the diagnostic codes which have a limitation on the duration of the 100 percent evaluation, permanent and total status will continue for the duration of the 100 percent schedular evaluation period despite the existence of a request for a VA examination. Permanent and total disability status thereafter shall be determined on the basis of the rating decision made at the conclusion of the period of total evaluation under a diagnostic code which limits the duration of the total evaluation.

(b) When an extra-schedular rating of 100 percent has been assigned under 38 CFR 3.321(b)(1), if the disability is static.

(c) When there is a 100 percent rating under the 1925 rating schedule 38 CFR 3.952, or when a total rating for compensation purposes has been in force for 20 years 38 CFR 3.951.

(2) **Death.** When a veteran dies of a nonservice-connected disability, permanency as to a total service-connected disability(ies) will be conceded, unless the total rating was assigned under paragraph 28, 29 or 30. (See also par. 56.18c.)

d. **Preparation of Memorandum Rating**

(1) **General.** The memorandum rating (original only) will be prepared in accordance with paragraph 47.03.

(2) **Legend.** The legend will be "FOR THE PURPOSE OF DEPENDENTS' EDUCATIONAL ASSISTANCE UNDER 38 U.S.C. Ch. 35."

(3) **Conclusion.** The conclusion will either be "Basic eligibility under 38 U.S.C. ch. 35 (is) (is not) established" or "Basic eligibility under 38 U.S.C. ch. 35 is established except as to permanency."

47.15 LOAN GUARANTY BASIC ELIGIBILITY

a. **When Rating Required.** A memorandum rating is required when the Loan Guaranty Division requests by memorandum or VA Form 3232, General Information Request, an eligibility determination as to whether the veteran's death, discharge or release was service related or whether a serviceperson hospitalized pending final discharge has a service-connected disability for which he or she could be discharged or released (38 U.S.C. 1825).

b. **Eligibility Criteria.** Loan guaranty benefits are provided for veterans or surviving spouses based on the criteria as set forth in 38 CFR 3.315(b) and 3.805.

(1) **Veteran.** The veteran's discharge was other than dishonorable and:

[(a) The veteran served on active duty for 90 days or more, any part of which was during World War II (September 16, 1940 through July 25, 1947), Korean conflict (June 27, 1950 through January 31, 1955), or Vietnam era (August 5, 1964 through May 7, 1975); or

(b) The veteran served on *continuous* active duty for 181 days or more, all of which occurred after July 25, 1947, and before July 27, 1950; after January 31, 1955, and before August 5, 1964; after May 7, 1975, and before September 8, 1980 (if enlisted), or before October 17, 1981 (if officer); or

(c) The veteran served on *continuous* active duty for 24 months or the full period (at least 181 days) for which the veteran was called or ordered to active duty service which *began after* September 7, 1980 (if enlisted), or October 16, 1981 (if officer), or the veteran completed at least 181 days of active duty with a hardship discharge or a discharge for the convenience of the Government; or

(d)] The discharge or release from active duty during the periods specified in subparagraphs (a), (b), and (c) above was for a service-connected disability; or

(c) The medical evidence shows that a discharge or release for a service incurred or aggravated disability could be granted.

(2) **Surviving Spouse.** A surviving spouse is entitled to loan guaranty benefits provided the veteran served on active duty on or after September 16, 1940, and

(a) The veteran died in service; or

(b) The veteran's death after service was service related provided service separation was not dishonorable.

c. **Rating Decision.** The rating will be prepared in duplicate. The copy will be forwarded to the Loan Guaranty Division which will notify the claimant of the decision. This decision will not be made part of any other rating decision.

(1) **Legend.** The legend will be "FOR LOAN GUARANTY PURPOSES."

(2) **Conclusions.** The concluding statement will be "Eligibility for loan guaranty benefits (is) (is not) established."

47.16 PURPOSES OF 38 U.S.C. 109(c)—POLISH AND CZECHOSLOVAKIAN ARMED FORCES

a. **General.** The Adjudication Division, Wilmington, has sole jurisdiction for all rating determinations required in these cases [(38 CFR 3.359.)]. Requests received by any other office should be returned to the submitting health care facility for their routing to Wilmington VA medical and regional office center.

b. **Evidence.** Rating determinations will be based on the evidence submitted with the request (par. 30.02h) and no development will be undertaken.

c. **Rating Preparation**

(1) **Legend.** The legend will be "For Hospital or Outpatient Treatment Purposes—38 U.S.C. 109(c)."

(2) **Rating Criteria.** Existing criteria for determination of service connection and degree of disability will be for application.

(3) **Conclusion.** Evaluation of conditions established as service connected will be limited to a statement of either "50 percent or more" or "less than 50 percent."

d. **Disposition.** The completed rating and all other materials will be returned to the Medical Administration Service (136), Wilmington, for their maintenance of the eligibility records.

47.17 EXTENSION OF DELIMITING DATES FOR DISABILITY—38 U.S.C. CHS. 31, 34 AND 35

a. **Medical Infeasibility for Training.** The delimiting date for educational assistance for veterans (chapters 31 and 34) and for eligible and surviving spouses (chapter 35) may be extended when the rating board determines that mental or physical disability not the result of misconduct, prevented their initiation or completion of a chosen program of education (38 U.S.C. 1652) at an educational institution (38 U.S.C. 1787) within the applicable 10- or 12-year period of eligibility.

b. **Application Date.** Application for an extension of a chapter 34 or chapter 35 delimiting date must be received in the VA within 1 year of the following dates, whichever is latest:

(1) The last date of the delimiting period otherwise applicable; or

(2) The termination of the period of mental or physical disability; or

(3) October 17, 1980 (the effective date of Public Law 96-466).

NOTE: There is no time limitation for requesting a chapter 31 delimiting date extension.

CHAPTER 48. SEVERANCE OF SERVICE CONNECTION

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CHAPTER 48. SEVERANCE OF SERVICE CONNECTION

48.01 POLICY

Service connection will not be severed in any case unless, based on all the evidence of record, it is determined that establishment was clearly and unmistakably erroneous and continuation of service connection cannot be maintained on any reasonable theory.

a. All available relevant evidence, including complete service medical data (and autopsy findings when pertinent in death cases), must be of record before action pursuant to [38 CFR 3.105 (a) and (d)] is undertaken.

b. When service connection has been in effect 10 or more years (computed [from the effective date of service connection, not the date of rating]), severance may be accomplished only if the original grant was based on fraud or it is clearly shown that the person concerned did not have the requisite service or character of discharge ([38 CFR 3.957]). In these cases, proposals to sever will not be made unless one of these factors is well established. [(See par. 52.09.)]

48.02 ADJUDICATION OFFICER APPROVAL OF SEVERANCE

a. **General.** All ratings proposing severance of or severing service connection will be referred to the Adjudication Officer for approval or disapproval. (See also par. 48.08.)

b. **Action by Adjudication Officer**

(1) If approved, the Adjudication Officer will sign the rating and the case will then be forwarded to the Authorization activity.

(2) If the Adjudication Officer does not approve the rating, it will be clearly marked DISAPPROVED and signed. The case will then be returned to the rating board for preparation of a revised rating, if required, to reflect current evaluation of all service-connected disabilities and disposing of all other matters at issue. The disapproved rating will be filed in the claims folder.

48.03 MAINTENANCE OF RECORD OF RATINGS UNDER [38 CFR 3.105(a)]

In all cases when a rating decision is made pursuant to [38 CFR 3.105(a)] and monetary benefits or service connection is affected, a list of names and claim numbers will be maintained in the regional office.

48.04 PREPARATION OF RATING DECISION PROPOSING SEVERANCE OF SERVICE CONNECTION

a. **General.** When it has been determined that a previous establishment of service connection was clearly and unmistakably erroneous, a rating decision proposing severance of service connection will be prepared on VA Form 21-6796, Rating Decision, showing a heading: PROPOSAL TO SEVER SERVICE CONNECTION—[38 CFR 3.105(d).]

b. **Rating Format.** The normal rating format, except for the conclusion, will be followed.

(1) The disability involved should be specified in the issue.

(2) The evidentiary facts and the discussion supporting the proposed severance should be set forth clearly and concisely. Neither the facts and discussion nor the facts and conclusion should be commingled or combined. (See also par. 49.17f(5).)

(3) An affirmative statement should be made in the discussion [either] that a clear and unmistakable error exists [(38 CFR 3.105(a)) or that there was a change (or change in interpretation) in law or published VA issue (38 CFR 3.114(b)).]

[(4) A signature line for the Adjudication Officer will be provided on all severance ratings (proposal and final) in the narrative section of the rating.]

c. **Severance and Reduction or Increase in Evaluation.** When severance of service connection for one disability and a reduction of evaluation for another disability are involved, a single rating decision accomplishing all purposes will be prepared showing in the heading: "[38 CFR 3.105(d) and 3.105(e)]."

(1) If in conjunction with a proposal to sever service connection for one disability, another disability(ies) is to be reduced, the provisions of [38 CFR 3.105(e)] are for application as to the disabilities other than the one for which severance is proposed. Notice will be furnished the veteran concerning both the reduction and proposed severance.

(2) If assignment of an increased evaluation for any disability other than the one for which severance is proposed will result in a decreased combined rating, a temporary increase will not be authorized. The information concerning the increased evaluation will be furnished with the notice of proposed severance (par. 24.02b).

d. **Dissenting Opinions Recommending Severance.** See paragraph 45.06.

48.05 RATING ACTION FOLLOWING 60-DAY PERIOD OF NOTICE

a. **Referral to Rating Board.** After the 60-day period of notice during which the claimant could have submitted additional evidence, the case will be referred to the rating board for preparation of the final rating severing service connection which will be prepared as provided in this paragraph. The new combined service-connected evaluation will include only those evaluations for disabilities which remain service connected. This will insure that no retroactive increase or benefit attributable to the severed disability will be awarded after basic entitlement has terminated ([38 CFR 3.400(d)(1)).]

b. **Jurisdiction.** Jurisdiction will be shown as "SEVERANCE OF SERVICE CONNECTION—[38 CFR 3.105(d)]."

c. **Recitation of Facts**

(1) If the facts contained in the [38 CFR 3.105(d)] rating decision of proposal to sever service connection were complete, they need not be repeated in the rating decision following expiration of the 60-day period. The final rating decision need only refer to the summary of evidence as contained in prior VA Form 21-6796, citing its date.

(2) When additional evidence has been submitted, such evidence should be specifically identified and appropriate reasons cited for its disposition as provided in paragraph 48.06.

d. **Psychosis.** If service connection is severed for a psychosis, a determination of entitlement should be made under 38 U.S.C. 602.

e. **Consideration of Pension Entitlement.** If, on the basis of available facts, a favorable disability pension rating may be made that determination will be included in the [38 CFR 3.105(d)] rating.

[f]. Upon the completion of the rating (following Adjudication Officer approval), the case file will be referred to the Authorization activity for all appropriate action (par. 24.02f).

48.06 NEW AND MATERIAL EVIDENCE OFFERED FOLLOWING RATING ACTION PROPOSING SEVERANCE OF SERVICE CONNECTION

a. Rating boards have full authority to render appropriate decisions as warranted by new and material evidence submitted after the proposal to sever service connection has been promulgated. The determination to propose severance of service connection is based on the evidence then of record and is binding with respect to that evidence only. The 60-day period of delay is provided by [38 CFR 3.105(d)] so that the veteran may submit additional pertinent evidence to show that the proposed rating should not be made final.

b. When additional evidence is submitted, it will be referred to a rating board to determine whether a change in the prior decision is in order.

(1) If the additional evidence is new and material, clearly justifying a favorable decision in accordance with the applicable regulations and rating policies, the rating board has full authority to make such decision upon reconsideration as is warranted.

(2) The decision should contain a complete statement of facts stressing the new basis upon which the favorable action is predicated, with such discussion as is necessary to indicate clearly the basis of the changed decision.

c. When no additional evidence is submitted or, if submitted, is not deemed new and material by the rating board, the rating board will prepare a final rating under [38 CFR 3.105(d)] as provided in paragraph 48.05.

48.07 SEVERANCE OF SERVICE CONNECTION AFTER VETERAN'S DEATH

a. **Severances Not Affecting Death Benefits.** Proposal to sever service connection after the death of a veteran will be made only when such proposal, if finalized, will result in entitlement to a lesser benefit or the complete disallowance of a claim for death benefits. Upon the veteran's death, all action on severance proposals (not finalized) will be discontinued unless the severance would affect death benefits (par. 31.04).

b. **Severances Affecting Death Benefits**

(1) All proposals to sever service connection after death of a veteran will be promulgated when such proposal, if finalized, will result in entitlement to a lesser benefit or the complete disallowance of a claim for death benefits.

(2) Proposals initiated but not finalized prior to notice of veteran's death will, upon notice of death, be reconsidered de novo, taking into consideration all available new evidence, such as medical reports of last illness, death certificate and, when indicated, autopsy report. The claimant will be notified of the proposal and given 60 days to submit further evidence (even though the veteran was given such notice).

48.08 REVERSAL OF RATING DECISION ON BASIS OF CLEAR AND UNMISTAKABLE ERROR

a. When the error to be corrected involves severance of service connection, Adjudication Officer approval is required. (See par. 48.02.)

(1) The rating will contain a certificate of error following the conclusion.

(2) The certificate of error will state: "I hereby certify that the claims record of this veteran has been reviewed, that there is a clear and unmistakable error properly identified, and that the above rating is consistent with the provisions of 38 CFR 3.105(a).

_____"

(Title)

b. When the error to be corrected involves evaluation, effective date, or other substantive issue (e.g., competency) correction will be effected pursuant to [38 CFR 3.105 a)] and a certificate of error will be signed by the Adjudication Officer or a supervisory designee not lower than Section Chief, *except* in those ratings involving [ ] increased combined evaluation retroactive for more than 5 years or original or reopened ratings resulting in monetary benefits retroactive for more than 5 years, unless the rating is the result of a Board of Veterans Appeals decision.

c. When a [38 CFR 3.105(a)] rating would involve an increase in combined evaluation or a monetary grant effective more than 5 years in the past, the approval of Central Office is required, except when, as stated in subparagraph b, the rating decision is the result of a Board of Veterans Appeals decision. (See par. 49.25.

d. When the error to be corrected involves statistical data only (e.g., change in the combat code), the statistical record will be changed and correction will be made on the rating [ ] (par. 49.04).

48.09 REVERSALS OF PRIOR DETERMINATIONS AS TO CHARACTER OF DISCHARGE, LINE OF DUTY, OR WILLFUL MISCONDUCT

When the Authorization activity rather than the rating board has initial jurisdiction under paragraph 14.01, 14.03 or 14.04 and finds that there is clear and unmistakable error in a prior determination which will result in the severance of service connection, the adjudicator will prepare an administrative decision as provided in those paragraphs containing a summary of findings and conclusion upon which the clear and unmistakable error is based. (See par. 14.34).

a. The folder will then be received in the rating board for appropriate action, including the preparation of a rating decision proposing the severance of service connection under [38 CFR 3.105 (c) and (d),] if in order, on the basis of the determination by the Authorization activity.

b. If the rating board disagrees with the determination of the Authorization activity as to the character of discharge, status of line of duty, or willful misconduct, the board will refer the matter by written memorandum to the Adjudication Officer for resolution of the issue.

48.10 AUTHORIZATION ACTIONS

For instructions for authorization actions, including development for possible pension entitlement, see paragraphs 24.02 and 24.03.

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CHAPTER 49. PREPARATION OF THE RATING DECISION

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CHAPTER 49. PREPARATION OF THE RATING DECISION

49.01 SCOPE

The instructions in this chapter, unless otherwise specified, relate principally to the preparation and processing of VA Form 21-6796, Rating Decision, as used for the [entry] and change of disability rating data in [the Target System.] Chapter 45 provides rules for the organization of the rating boards and describes their functions and responsibilities. Appropriately titled chapters provide specific instructions governing rating procedures and policy for particular issues. Instructions for the preparation of ratings on VA Form 21-6796 and other rating forms [that do not require entry or change as rating data in the Target System] are furnished elsewhere, as follows:

a. **Memorandum Ratings**. See chapter 47.

b. **Death Ratings**. See chapter 56, subchapter III.

c. **Accrued Ratings**. See [chapter 56, subchapter IV.]

d. **VA Form 21-564d, Dental Rating Sheet**. See chapter 51.

e. **VA Form 21-6789, Deferred or Confirmed Rating Decision**. See paragraphs 46.04 and 46.05.

f. **VA Form 21-6790, Rating Decision on Appeal**. See paragraph 18.16.

49.02 DETERMINING NEED FOR [TARGET ENTRY]

a. **General**. Only disability ratings which [enter], change or remove rating data in the master record at the Hines DPC will be processed [through the Target System].

(1) When [entry of] rating data is required, but a current rating action is not in order, the [301 or 303 screen is to be used] to [enter] current and future rating data. Except as provided elsewhere, this authority is limited to the [coding] of data contained in an existing rating signed by the rating board. (See par. [15.17.)]

(2) This does not relieve the rating boards of their responsibility for preparation of ratings when required for the resolution of pending issues or as otherwise required in this manual, with the degree of completeness most probably required for computer processing. For example, in the case of an initial claim or a reopened claim based on new evidence, the required rating would necessarily be prepared with complete data. (See also par. 49.05.)

(3) In certain instances, when there is no change in substantive data, the new or changed data (e.g., competency code) may be introduced by [use of the CORR command.] (See also par. 49.04b re corrections.)

b. **[Disability] Ratings**. The following will be [entered into Target.]

(1) All *[original disability]* ratings[, including disallowances. (See par. 16.06.)]

(2) All *[supplemental]* ratings which:

(a) Increase or decrease (but not terminate) the monetary benefit, currently or prospectively (other than pension ratings on aid and attendance or housebound entitlement – par. 23.03c); or

(b) In a case in a terminated or disallowed status, establish service connection for a zero percent disability or sever service connection for any disability. (See par. 24.02 [and 16.02.)]

(c) Dispose of a disability not previously rated which will be recorded as one of the first six disabilities, or as the seventh disability (requires processing in order to record the information that there are now "more than six disabilities" in the case), or which change other statistical data in the Hines DPC records.

NOTE [ ]: These ratings must be prepared on VA Form 21-6796.

(d) Confirm a prior rating and also establish, change or cancel a future diary control. (May be prepared and processed on VA Form 21-6789.)

(e) Decreased ratings, terminating entitlement, which *sever service connection* for a disability recorded in the master record. (See par. 24.02.)

c. **Ratings [Not for Entry into Target]** In addition to ratings prepared on VA Forms 21-564d, [21-6789 Deferred or Confirmed Rating Decision] (except when used to [enter] future diary control data), 21-6790 (Rating Decision on Appeal), and death ratings [on any VA form] (see par. 56.14), the following disability ratings prepared on VA Form 21-6796 will not be processed for [Target entry]:

(1) *Increased or decreased* rating which result in only a retroactive monetary adjustment in a running award for a period *entirely in the past* with no effect on current or future entitlement.

(2) *Decreased* ratings which will result in a *discontinuance* of a running award, but which *do not* sever service connection for a disability recorded in the master record (e.g., reduction to 0 percent or not PT due to improved physical condition, no longer unemployable) (see par. 24.03b(2)).

(3) *Confirmed* ratings which neither add any disability nor change other statistical data in the master record, nor establish, change or cancel a future diary control. (See par. 49.14 re future diaries.)

49.03 PREPARATION AND PROCESSING OF RATINGS—GENERAL

a. **General.** Except as specifically provided for overprint ratings (pars. 53.02f and 55.08e), all rating decisions (prepared on VA Form 21-6796) will be typed and delivered to the rating board for signature. VA Form 21-6796a, Rating Decision Worksheet, is provided for use by board members in the preparation of ratings. When all required action has been taken, the completed rating decision (all copies) will be attached to the [outside flap of the] claims folder and referred to the Authorization Unit. (See par. 45.13 re prior review by service organization.)

b. **Filing** Ratings will not be filed down in the claims folder (par. 1.09 f and g) prior to completion of all action by the [Authorization] activity.

(1) When authorization action on such a rating must be deferred, the completed rating will be securely attached on the inside *left* flap of the claims folder prior to return to files.

(2) [ ] Ratings [ ] will be filed down in the claims folder by the adjudicator upon completion of action.

(3) In all cases, the original of the rating decision will be the file copy. (See par. 49.06 re copies of ratings.)

[c] **Rating [ ] Transactions.** Rating data will [ ] be [entered] as an integral part of *original[, amended,] and reopened disability* award [processing.] Additionally, rating data will be [entered, changed, or corrected in the] existing master record [using the CORR command if award action is not required.]

(1) When [entered] as part of an award transaction, computer processing [splits award and] rating data into a [separate transactions.]

(2) All [current and] future rating data [ ] will be coded onto [screen 301 for processing] as a TR 15 or, if a rating change to a terminated or disallowed record, as a TR 19.

49.04 CORRECTION OF ERRORS

a. **Errors Discovered Prior to Transmittal to Hines DPC**

(1) Correction of errors on the rating form as to EVALUATIONS or EFFECTIVE DATES of individual disabilities or *COMBINED DEGREE* is not permitted. If any errors are to be corrected in those items, prior to transmittal to Hines DPC, a new rating must be prepared and the erroneous rating destroyed.

(2) Correction of any other errors may be made by drawing single lines through the erroneous entries, inserting and initialing the corrections.

[ ]

b. **Errors Discovered After Transmittal to Hines DPC**

(1) Errors in *other than* combined degree, evaluations or effective dates, detected after transmittal to the Hines DPC, will be returned to the rating board, and corrected and initialed in accordance with the foregoing subparagraph.

(2) If the error is in *the combined degree, evaluation or effective date*, the rating will be marked "VOID" and retained in the claims folder along with the correcting rating. (But see par. 48.08 re ratings under 38 CFR 3.105(a).)

(3) In either instance, the claims folder and material will then be referred to the Authorization activity for corrective action. (See par. 15.03.)

c. **Errors Due to Changes in the Rating Schedule**

(1) A general review will ordinarily not be mandated when a disability rating schedule revision is published. However, consider every claim referred to the rating board after a schedular revision under the new criteria.

(2) If a change is required to the diagnostic code only, enter the correct code, together with the notation "Transmittal Sheet No. _____ applied," on the last disability rating. This annotation will be dated and initialed by the reviewer. Then refer the claims folder and material to the Authorization activity to update the master record.

(3) If a claim requires a change in evaluation, prepare a corrected disability rating and refer the claims folder and corrected rating to the Authorization activity to update the master record and notify the claimant.

NOTE: If a schedular change contains liberalizing provisions, 38 CFR 3.114 is for application. Increased evaluations based upon a schedular revision may not be made earlier than the date of approval. (See par. 24.14.)

49.05 COMPLETION OF ITEMS ON RATINGS

a. **General.** As explained in paragraph 49.02, the amount of information required on VA Form 21-6796 will vary according to whether it will be processed for transmission to the Hines DPC and, if so, the data required will also vary according to the status of the case at the time of computer processing and the effects of the action taken.

b. **Responsibility of Rating Board.** The rating board will be responsible for completion of the rating decision VA Form 21-6796 in accordance with the following:

		Original					
Block No.	Item	Memo	Comp.	Pension	Supp.	Death	See Par.
1.	RO Number	All	All	All	All	All	49.06g
2.	Type of Rating	All	All	All	All	All	49.06i
3.	Original Disability Rating		All	All			49.06j
4.	Veteran's File Number	All	All	All	All	All	49.07
5.	Veteran's Initials and Surname	All	All	All	All	All	49.09
6.	Copy to	(1)	(1)	(1)	(1)	(1)	49.06a
7.	Veteran's Social Security No.	(2)	(2)	(2)	(2)	(2)	49.08
8.	Date of Claim	All	All	All	All	All	49.06b
9.	Date of This Rating	All	All	All	All	All	49.06e
10.	Date of Birth		All	All	All	All	49.13
11.	Date of Death	(1)			(1)	All	49.06d
12.	Active Duty	All	All	All	~~All~~	All	49.10a
13.	Additional Service Code		(1)	(1)	(3)		49.10b
14.	Combat Status		(1)	(1)	(3)		49.11
15.	Date of Last Exam	(1)	All	All	(1)		49.06c
16.	Future Physical Exam		All	All	(1)		49.14
17.	Employable		All		(1)		49.12
18.	Competent		All	All	(1)		49.15
19.	Special Provision Code		(1)	(1)	(1)		49.23
20.	No. of Additional Diagnostics		(1)	(1)	(1)		49.16a
21.	No. of Additional S/C Diagnostics		(1)		(1)		49.16b
22.	Special Monthly Compensation		(1)		(1)		49.22
23.	Narrative	All	All	All	All	All	49.17a
	Legend	All			(1)	(1)	49.17c
	Jurisdiction	All	All	All	All	All	49.17d
	Issue	All	All	All	All	All	49.17e
	Facts	All	All	All	All	All	49.17f
	Discussion	(1)	(1)	(1)	(1)	(1)	49.17g
	Conclusion	All	All	All	All	All	49.17h
	Diagnostic Codes	(1)	All	All	(1)		49.18
	Evaluation–Effective Dates		All	All	(1)		49.18
	Combined Degree		All	All	(1)		49.20
27.	P/A	(1)	(1)	(1)	(1)	(1)	45.13
	Address	(1)	(1)	(1)	(1)	(1)	49.06a(3)
	Signatures	All	All	All	All	All	45.05
	Chairperson	All	All	All	All	All	45.05
28.	Rating Board Number	All	All	All	All	All	49.06g

Footnotes
(1) As applicable
(2) If different than block 4 Errata to chg 478 9/7/89
(3) If changed

[49.06 NONENTRY ITEMS

a. **Copies of Ratings.** Except as provided below, prepare an original only of VA Form 21-6796, Rating Decision. Check the applicable box(es) in the item "Copy To" if an additional *signed* copy or copies are required under current instructions. For example:

(1) **For Chapter 31 Purposes.** In any case in which the combined evaluation is reduced to 0 percent or if service connection for the last compensable disability is severed, and there is a VA Form 22-6564, Claims Folder Flash—Vocational Rehabilitation Trainee, in file indicating receipt of chapter 31 benefits, prepare a copy of the rating for release to the Vocational Counseling and Rehabilitation Division. (See par. 23.10.)

(2) **For Insurance Purposes**

(a) A veteran who was separated from service after April 24, 1951, may be entitled to insurance benefits upon the initial establishment of service connection for any disability, or if service connection is confirmed for any disability resulting from a prior period of service, unless separated from service after April 24, 1951, under dishonorable conditions. (See pars. 2.10a(2), 28.05 and 30.09.)

NOTE. All copies of ratings (initial or supplemental) proposed under this paragraph must show the date of rating and active duty dates (which are not for Target entry with supplemental ratings except if a change in such master record data is required).

1. See par. 47.08 re memorandum ratings specifically for insurance purposes.

2. In any case in which the rating board believes the veteran is suffering from a terminal illness, the Adjudication Officer or his/her supervisory designee will hand deliver a copy of the rating to the Veterans Services Division (VSD), except if the file contains a duplicate copy of VA Form 29-4364, Application for Service Disabled Veterans Life Insurance (RH) or 29-4364a (discontinued). Annotate the rating sheet to show "Insurance copy delivered to VSD—Potential Terminal Case."

(b) Refer copies of ratings establishing permanent and total disability for pension purposes to the VSD in order that they may develop applications for possible waiver of premiums and benefits under the Total Disability Income Provisions, if appropriate.

(3) **For the Medical Activity.** If a medical center requests a determination of service connection for hospitalization or treatment purposes, prepare an extra copy of the rating for release to the appropriate Medical activity. (See par. 30.02c.)

(a) Add the veteran's Social Security number to the rating unless that number is also the VA file number.

(b) Batch copies of rating decisions each day and forward them to the appropriate clinics of jurisdiction with an Optional Form 41, Routing and Transmittal Slip, indicating "For Hospitalization or Treatment Purposes".

(4) **For the Veterans Services Officer.** If payments are being made to the guardian for an incompetent veteran, prepare a copy of any rating establishing the veteran as competent for transmittal to the appropriate VSO. (See par. 54.01d(1).)

(5) **Special Law Code 10 Cases.** In each disability case, if the award is authorized under special law code 10, prepare a copy of the rating for submission to Compensation and Pension Service (213B), VA Central Office. (See par. 15.32a(10)(a).)

(6) **For Specially Adapted Housing Purposes**

(a) On all original or reopened compensation claims in which the requirements of 38 CFR 3.809 or 38 CFR 3.809a are initially met, dispose of the issue of entitlement to specially adapted housing on the rating using rating code 41 or 41A and the applicable paragraphs as found in appendix A. (See pars. 30.07 and 47.12.)]

(b) On the Loan Guaranty copy of the disability rating enter the veteran's full name and address in the upper right corner of the narrative.

(7) **Individual Unemployability.** Submit copies of ratings granting total benefits because of individual unemployability to Central Office (214D) if the grant is not the result of a Board of Veterans Appeals decision and if the veteran falls into one of the following categories:

(a) The veteran has been removed from the labor market more than 12 months before the effective date of the grant.

(b) The veteran is age 60 or older before the effective date of the grant.

b. **Date of Claim.** Entry will be the date of reciept of the application or of the claim for increase (including reort of examination or hospitalization--38 CFR 3.157, or any request requiring the rating decision being made. This date will not be determined by consideration of the rating board decision of the effective date of an evaluation for service-connected disabilities or the date of permanent and total disability for pension. (See also par. 1.15c(7).)

c. **Date of Last Examination.** The date of the most recent official examination or hospitalization (or in pension cases, the date of examination by a private physician or, in the absence thereof, the date of an acceptable statement or letter from a private physician (see par. 55.01b)), will be entered on all ratings. If report of hospitalization, enter the prefix "HR" and the dates of admission and discharge for a final report or, for an interim report, the admission date followed by "Remaining" (e.g., "HR 6-9-75 Remaining").

best copy available

d. **Date of Death**. See chapter 56, subchapter II.

e. **Date of This Rating**. The date the rating is typed will be entered [ ] on all ratings. When, due to need for correction or any other reason, the typed rating is not signed by the rating board until a later date, this typed date will be lined through and the current date entered by the chairperson or designee.

f. **Claimant Represented By**. See paragraph 45.13.

g. **Rating Board and Regional Office Number**. Data identifying the rating board and the station where the rating was prepared will be entered.

h. **Signatures.** See paragraph 45.05.

[i. **Type of Rating**. The rating board will state "Memorandum," "Disability," or "Death" to show the type of rating.

j. **Original Disability**. The rating board will enter either a "Yes" or "No" to indicate whether this disability rating is the original rating.

49.07] FILE NUMBER

The file number will be entered on the space provided on *all* ratings, without need for prefixing zeros. (See par. 15.09 re entry on awards.)

[49.08 SOCIAL SECURITY NUMBER

If the veteran's Social Security number is different from the file number, enter the Social Security number on all ratings.]

49.09 NAME OF VETERAN

The first two initials and full surname of the veteran, as determined in accordance with paragraph [1.15c(1)] will be entered in the spaces provided on *all* ratings. [ ]

49.10 [ ] ACTIVE DUTY DATES AND ADDITIONAL SERVICE CODES

The [ ] veteran's [ ] dates of entry on and release from active duty will be entered on *all* ratings to be processed with initial or reopened awards or disallowances, and on any supplement rating which bases a change in entitlement on a different period of service. (See par. 49.06a(2) re requirement in ratings for insurance purposes.)

[a.] Two or More Periods of Service

(1) When the veteran had more than [two periods] of service the inclusive dates for the period of service on which entitlement is established should be entered in the [first of the] active duty [blocks], as follows:

(a) In compensation ratings, the latest entitling period.

(b) In pension ratings, the earliest entitling period.

(2) Multiple periods of other than dishonorable service, without any break in service, should be entered as a single entitling period of service.

(3) Additional periods of service (prior and subsequent) will be shown in the "Narrative" at the left top of the body of the decision.

(4) The dates for [two periods] of service will be introduced and maintained in the master record. [ ] (See also par. 15.30c re award entitlement code entries.)

[b] **Additional Service Code**. As determined by the one period of service upon which the specific entitlement is based (i.e., the period to be [entered first] in the master record), also enter the appropriate additional service code in the space provided, as follows:

(1) **Code 1** [-WT...] Additional service during a wartime period.

(2) **Code 2** [-PTE...] Additional service during a peacetime period.

(3) **Code 3** [-SCD...] Used only in pension ratings based on less than 90 days service; i.e., when the veteran had less than 90 days wartime service but entitlement is established based on a service-connected disability at time of separation for which discharge or release was or would have been granted as provided in [38 CFR 3.3(a)(1)(ii), (a)(2)(iii), and (a)(3)(ii).]

NOTE: When entitlement is based on one period and there are additional periods of both wartime and peacetime service, use code 1.

[c] **WWI—Service in Russia**. In those cases in which the veteran had no active service during the inclusive dates for World War I (April 6, 1917-November 11, 1918) but did serve thereafter, on or before April 1, 1920, the rating narrative must show whether or not there was service in Russia, qualifying as WWI service. (Par. 49.17f(7).)

49.11 COMBAT DISABILITIES

a. **Code Number**. The appropriate code number, as listed under this item on the rating form, will be entered in the block provided on all input ratings to indicate whether there are any combat disabilities and, if so, whether compensable, noncompensable, or both, as follows:

(1) **Code 1—(None)**. No combat disabilities.

(2) **Code 2—(Comp.)**. One or more combat disabilities, all of which are compensable.

(3) **Code 3—(Noncomp.)**. One or more combat disabilities none of which are compensable.

(4) **Code 4—(Both)**. One or more combat disabilities, not all of which are compensable.

b. **Definition.** The term, combat disability, applies to any injury received in action against an enemy of the United States or as a result of an act of such an enemy. This definition includes, in addition to wounds by missiles, injuries received in accidents, explosions, airplane crashes, etc., during a period when the veteran was in action, including airplane flights against enemy forces and installations, or as a result of enemy action, for example bombing or strafing. Diseases directly attributable to exposure as incident of action against the enemy, or to the result of acts of the enemy (including exposure following airplane crash, shipwreck, etc., resulting from acts of the enemy), are to be held as of combat origin. Conjecture in the matter is to be avoided, and no combat determination is to be made unless the original records of the inception of disease or injury clearly refer to action or acts of the enemy with a showing of causal relationship, or unless other evidence of record relating to the circumstances or incurrence, in addition to later medical opinion, establishes combat origin.

49.12 EMPLOYABILITY

a. **General.** On [all] *compensation* ratings the appropriate [indicator] (as shown below) will be entered in the block provided to indicate the current employability status of the veteran. [ ]

(1) ["YES"] (Employable or Not An Issue), will be used to indicate that employability is not a factor or, when an issue, that the veteran is employable.

(2) ["NO"] (Unemployable), will be used when it is established that the veteran is unemployable, as explained below.

b. **Pension Ratings**. Entry [ ] is not required for pension ratings. (But see par. 49.23b(1) re extra-schedular evaluations under [38 CFR 3.321(b)(2)].)

c. **Compensation Ratings**. [The "NO" indicator] will be used only in those compensation grants for which the combined evaluation is less than 100 percent but the veteran is entitled to the 100 percent rate because of individual unemployability (see par. 55.08).

NOTE: The combined evaluation, as determined, will be entered [ ], it will NOT be raised to 100 percent to justify payment at the 100 percent rate because of unemployability.

(1) In addition to entry of employability [indicator "NO"], disability rating code 18 will be required in the body of the rating.

(2) [A "YES" indicator] will be assigned in all other compensation ratings; that is, when payment is to be made on the basis of the specific combined degree.

[d] **Future Reduction in Compensation**

(1) When, as provided in paragraph 55.08, a future reduction under [38 CFR 3.105(e)] is in order because of demonstrated regained employability, entry of [a "NO"] in this item on the current rating will be required for successful audit of the *current* entitlement based on unemployability.

(2) The disability rating code 18 in the body of the rating, showing the inclusive dates of determined unemployability, will be authority for the [authorization] activity to include the necessary *future change to [a "YES"]* for the reduced rating based on regained employability. [ ]

NOTE: MSG 831 UNEMPLOYABILITY INDICATED BUT NOT PAID will issue if [a "NO"] (Unemployable) is in the master record but payment of compensation is at less than the 100 percent rate. [A CORR transaction] will be required to change [the "NO" to a "YES".]

49.13 DATE OF BIRTH

The date of the veteran's birth (month, day and year) will be entered on *all [disability] and [death] ratings*. When there are two or more unverified dates of birth in the claims folder, the date establishing the youngest age will be used, subject to verification when required (see par. 22.14).

49.14 FUTURE DATE CONTROL

a. **General**. The rating form provides space for [ ] a future physical examination.

(1) **Physical Exam Control**. A positive entry (a future control date or "No Exam") will be required on every [disability] rating in the space for "Physical Exam" even though such entry may constitute a repetition of an entry made on a prior rating decision; i.e., *this item must not be left blank*. "NO EXAM" will be entered when:

(a) A control for a physical examination is not required.

(b) A control previously established by the rating board is to be canceled, or,

(c) An "AT ONCE" examination (less than 3 months in the future) is to be requested by VA Form 21-2507 [, Request for Physical Examination,] (par. 55.05).

[(2) **Other Controls**. Other rating controls are to be noted at the end of any discussion in the narrative portion of the rating. (See subpars. b and d below.)]

(3) **Control Date and Reason**. To establish a physical exam control, it is necessary only to enter the month and year in the spaces provided. The master record will maintain only one physical exam control at a time. When a control for *other* future review and/or action (for a date not less than 3 months in the future) is determined necessary [ ] the month, year and reason code, in that order [are to be stated in the discussion.]

(a) *To Change a Physical Exam Control*, it is necessary only to enter the new month and year in the space for "Physical Exam" control or to enter "No Exam" to cancel.

(b) *To Cancel "Other Control,"* [cancel control] will be [noted] in the [discussion] followed by the month, year and reason code previously entered.

(c) *To Change "Other Control" to a Different Date*, the necessary entries will be made on an accompanying award (if any) or, otherwise, [the DIAR command) must be used [ ] to cancel the established control [and] to establish the new control, as provided in paragraph 1.12b.[ ]

b. Limitations On Control By [Disability] Rating Decision. [ ] Only future date rating controls under the following reason codes may be introduced, changed or canceled by [a] rating. Additionally, since only a physical examination [ ] can be [entered] on the rating [screen,] an additional rating control, if required, will be introduced on an award [screen] or by use of [the DIAR command,] as provided above. A control for a future date beyond the "Limit" permitted will result in a reject of this datum as "OUT OF RANGE" for corrective action.

Code	Reason	Limit
01	Future Physical Exam	5 years
03	Helpless Child Review	Open
04	NSC TB VAR 1324 Review	6 months

c. **Computer Generation of Request for Physical Examination**. At maturity of the master record physical exam control, VA Form 21-2507a, Request for Physical Examination, will be computer generated and dispatched to the appropriate regional office for review and completion, if an examination is still in order, as provided in paragraph 55.06.

d. **[Other Ratings.]** Rating controls may be established, changed or canceled by referral of VA Form 21-6789, Deferred or Confirmed Rating Decision, which provides a section for entries for this purpose, to the [Authorization] activity (par. 46.04).[ ]

49.15 COMPETENCY

The rating board will enter the applicable [indicator] on *all* [disability] ratings to be processed with initial or reopened awards or disallowances, and on any supplemental rating when the prior [indicator] is to be changed as follows:

a. ["YES."] Competent or not an issue.

b. ["NO."] Incompetent.

NOTE: The authorization unit will be responsible for the entry of the Competency Payment Code [ ] (par. 23.07).

[49.16 ADDITIONAL DIAGNOSTICS

a. **Additional Diagnostics**. Enter the number of disabilities (i.e., all diagnostic codes) in excess of nine.

b. **Additional Diagnostics Service Connected**. Enter the number of additional diagnostics entered in the additional diagnostics field which are service-connected (compensable and noncompensable). For example, if there are 10 service-connected disabilities and three non-service-connected disabilities, the entry for additional diagnostics will be "4," and "1" will be the entry for additional diagnostics S/C.]

49.17 THE NARRATIVE

a. **General.** The space provided on VA Form 21-6796 for the narrative or body of the rating should generally be sufficient. If additional space is required, the typist will use VA Form 21-6796b, Rating Decision Continuation Sheet. When one or more VA Forms 21-6796b are used, the printed portion at the bottom of VA Form 21-6796 (and VA Form 21-6796b, other than the

last) will be cut off so that the portion beginning with the item for Special Provision Code entry will appear, and be completed, only on the last page of the rating. The following subparagraphs prescribe the specific detail which will be provided on this space up to the concluding decision (subpar. h). Exhibit A shows the format for headings to be used.

EXHIBIT A

NARRATIVE

EOD RAD (additional dates of service, see par. 49.17b.)	SC(estab) (reestab) for DC's (See par. 49.06a(2)(a).) (LEGEND, See par. 49.17c)	Name/Address (See par. 49.06a[(3).])

J. = (Jurisdiction, see par. 49.17d)
I. = (Issues, see par. 49.17e)
F. = (Facts, see par. 49.17f)
D. = (Discussion, see par. 49.17g)

b. **Additional Dates of Service**. As stated in paragraph 49.10, if the veteran had more than [two periods] of service the additional dates will be typed as the first line entry at the top left of the narrative portion of the rating.

c. **Legends**. When applicable, and as specifically provided in pertinent instructions, the rating sheet will bear a legend in conspicuous type at the top of the narrative portion to insure handling. For example: ["38 CFR 3.105(a)," "38 CFR 3.105(d)," "38 CFR 3.105(e)," "38 CFR 3.321,"] etc. (See pars. 48.04a, 52.02a and 52.13a(1)). For legends on memorandum ratings on VA Form 21-6796, see paragraph 47.02.

d. **Jurisdiction**. Using the identifier "J," the occasion for the present consideration of the case should be stated, i.e., the reason the case is before the board for rating. Pertinent dates should be cited unless otherwise shown in the caption. Among others, the jurisdictional reason may be:

(1) Original disability or death claim.

(2) Claim for increase or reopened claim.

(3) Additional service records.

(4) Routine future exam report or hospital report.

(5) Personal appearance of the veteran.

(6) Review on appeal, or locally or nationally, authorized review.

(7) Determination of eligibility for outpatient treatment.

(8) Remand by the Board of Veterans Appeals.

e. **Issues**. Using the identifier "I," the issue(s) before the rating board will be clearly stated. When the issue(s) pertains to all disabilities included in the decision, the citation may so state; otherwise, specific disabilities should be briefly cited. The issues, as here visualized, are limited to changes compared to previous determinations or a new determination under consideration. There may be more than one issue; for example, service connection and increased evaluation. Among others, the issues may be:

(1) Service connection for specified disability or disabilities.

(2) Service connection for cause of death and/or disability at date of death.

(3) Evaluation of specified disabilities.

(4) Permanent total disability (PT-NSC).

(5) Willful misconduct.

(6) Helplessness.

(7) Loss or loss of use of one or more hands, feet or eyes, etc.

f. **Facts**

(1) Using the identifier, "F," all pertinent facts which will be the basis of the present rating should be succinctly cited.

(a) The evidence pertinent to the determination of each issue will be summarized as nearly as possible in the order of these issues, segregating as well as possible each disability with its related evidence arranged chronologically.

(b) Generally, evidence will be identified and digested before being recorded. DO NOT quote at length from letters, affidavits, hospital reports, etc.

(c) Evidence identified by DM&S as coming under the authority of 38 U.S.C. 4132 will be cited by specifying only the name of the medical facility furnishing the report and the date of the report (see par. 1.091). The rating decision should not directly incorporate any facts or quotations derived from a 38 U.S.C. 4132 record.

(2) **Favorable and unfavorable evidence should be cited without partiality, especially when severance of service connection is under consideration.** When initial service connection is under consideration, cite the circumstances under which the injury or disease was sustained or discovered including, but not limited to the following:

(a) Pertinent circumstances of service, length and geographical location, combat or overseas.

(b) Service treatment with inclusive dates.

(c) Whether or not discharged for the disability, or whether or not the claimed disability is shown on discharge examination.

(d) Pertinent evidence, with names and dates, dates of postservice examination or [hospital] treatment evidence or record to establish continuity, especially if long periods are involved.

(3) When initial or amended evaluation is in issue, cite essential findings on which degree of disability is to be determined, especially evidence determinative of the final degree.

(a) Compare relevant findings at the time of previous rating with present findings, new findings, and those which have subsided.

(b) Insure that the cited findings bring the case squarely under the regulations and the rating schedule.

(4) When a total rating is assigned for compensation or pension on the basis of unemployability, the summary of facts should set forth the evidence regarding last employment, marginal employment, or other influencing factors. This is unnecessary when the evaluation of a single disability or the combined evaluation of multiple disabilities is 100 percent.

(5) When a rating under [38 CFR 3.105(a)] severs service connection or retroactively changes an evaluation, the evaluation in effect prior to the severance or prior to the change will be shown under "Facts."

(6) When a rating is made under 38 U.S.C. 351, the summary of facts should set forth fully the evidence on which the determination is made.

(7) When the veteran's service was after November 11, 1918, and prior to April 2, 1920, a specific statement should be made as to whether or not there was service in Russia. (See par. 49.10c.)

g. **Discussion**. The facts having been cited, the board's reasoning will be reduced to writing, using the identifier "D."

(1) This may include citation of pertinent regulations, program guides, etc. It will not include, however, the provisions of the rating schedule unless there is some unusual application or requirement found elsewhere. (See par. 49.18d.)

(2) Medical facts and reasoning linking or separating two disabilities or establishing or refuting prior inception or aggravation will be cited.

(3) This discussion and reasoning is what the board adds to the evidence. Whatever is necessary to justify the conclusions should be cited.

(4) Avoid any conclusion to be set forth below with rating codes, percentage ratings, etc., and use of such phrases as "The evidence warrants service connection"—or "denial," or "increase," "decrease," etc.— and "The following conclusion is reached," etc. When the facts speak for themselves, no "discussion" is necessary.

(5) The denial of inferred issues such as special monthly compensation, aid and attendance or housebound, and dependents educational assistance will be explained. When there is a high degree of disability involving an extremity, whether specifically claimed or not the discussion should reflect that the question of special monthly compensation for loss of use has been considered.

(6) Individual conditions as the result of a single disease entity will be described by diagnostic codes and evaluations. (See par. 49.18d.)

(7) The denial of any disability(ies) for one of the following reasons will be explained in the discussion and shown under rating code 8:

(a) Constitutional or developmental abnormalities;

(b) Not found on last examination; and

(c) Not shown by the evidence of record.

[(8) The instructions to Authorization activity to establish, cancel, or change master record controls other than for future physical exams will be provided at the end of the discussion. Additionally, the rating board should flash the rating to alert Authorization of the required action.]

h. **Conclusion**. The rating determination proper with rating entitlement codes, diagnostic codes, evaluations and effective dates, and any other required data, constitutes the conclusion. These are discussed fully in the following paragraphs.

49.18 DIAGNOSTIC CODES

a. **General**. Diagnostic codes will be assigned, in accordance with the Schedule for Rating Disabilities, for disabilities considered by the rating board in granting or denying entitlement.

(1) *All* disabilities, whether service connected or nonservice connected, will be assigned diagnostic codes. (See par. 49.19c(2) re individual evaluations to be shown, and par. 49.21 regarding order in which disabilities will be listed.)

(2) When there are more than six diagnostics codes, a rating board member will identify to the Input activity (underscoring, by pen) those codes, whether service connected or not, to be entered in order to justify the entitlement granted.

b. **Minimal Requirements.** Each [disability] rating must have at least one diagnostic code.

c. **Hyphenated Codes—Rating by Analogy**

(1) When rating any unlisted condition by analogy, a built-up diagnostic code number ending with "99" will be employed, followed by an additional specific diagnostic code after a hyphen to identify the basis for the assigned evaluation.

(2) When rating (a listed condition) under one diagnostic code requires use of an additional diagnostic code to identify the basis for the evaluation assigned, the additional code will be shown after a hyphen.

[d. **Rating of a Disability Entity**. It is fundamentally essential in the proper evaluation of a disability that individual findings are not to be evaluated separately when the findings in their entirety constitute one disability. For example, a disability of a tibia with malunion, limitation of dorsiflexion, eversion, inversion and traumatic arthritis of the ankle would be evaluated under one diagnostic code, DC 5262, in accordance with the effect upon ankle function with no separate evaluation for the limitation of motion or traumatic arthritis.

e.] **Rating of Multiple Involvement of a Single Disease Entity**

[(1)] When rating multiple disabilities resulting from the same disease entity (e.g., arthritis, multiple sclerosis, etc.) each condition will be evaluated separately. The rating will show the diagnostic code for the disease entity only once, and this will be as the lead diagnostic code of the hyphenated codes. This lead code will be followed by a code for the body system of the most severely affected condition. Thereafter, involvement of the other body systems will be coded under the diagnostic code assignable for the condition on which the valuation is determined.

[(2)] The diagnosis for the other body systems involved will show the condition as secondary to the basic disease entity.

[EXAMPLE 1: Multiple Sclerosis as Disease Entity

1. SC (VE Inc)

8018-8510	Multiple Sclerosis, muscle weakness, left arm 30% from 11-30-75
6297	Impaired Hearing, secondary to multiple sclerosis 0% from 11-30-75
6079	Defective Vision, secondary to multiple sclerosis 0% from 11-30-75
COMB:	SC 30% from 11-30-75]

EXAMPLE [2]: Multiple Sclerosis as Disease Entity

	1. SC (VE Pres.)
8018-5110	Multiple Sclerosis, with loss of use of both feet 100% from 11-30-75
7512	Cystitis, chronic, secondary to multiple sclerosis 40% from 11-30-75
7332	Rectum and anus, impairment of sphincter control secondary to multiple sclerosis 30% from 11-30-75
COMB:	SC 100% from 11-30-75
	P-1 Entitled special monthly compensation under 38 U.S.C. 314, subsection (p), and [38 CFR 3.350(f)(3)] at the rate intermediate between subsection (l) and subsection (m) on account of loss of use of both feet with additional disabilities, cystitis and impairment of rectum and anus sphincter control, independently ratable at 50 percent or more from 11-30-75.

NOTE: Entry would also be required of SMC 18 [, hospitalized SMC 18,] and loss codes 24.00-0.

49.19 EVALUATIONS AND EFFECTIVE DATES

a. **General.** Individual percentage evaluations will be furnished for disabilities rated in accordance with appendix A to this manual and this paragraph. Individual effective dates will be furnished for all *service-connected* disabilities.

b. **Service-Connected Disabilities.** Current and, if in order, future percentage evaluations, and effective dates thereof, will always be required for all service-connected disabilities.

(1) Historical evaluations will be furnished only to the extent necessary, consistent with sound rating practice. Extreme care will be taken to show historical evaluations under the 1925 schedule, protected under [38 CFR 3.951 and 3.952,] when the rating grants pension as the greater entitlement so that it will not be overlooked in the event that pension is subsequently terminated. (See example No. 2, par. 49.21.)

(2) As a minimum, the evaluation in effect for each service-connected disability immediately prior to rerating will be recorded, as well as the new evaluation assigned by the rerating, with the future evaluation(s), if indicated.

(a) In [38 CFR 3.105(e)] ratings, for example, the current evaluation in effect will be shown first, followed by the future reduced evaluation(s).

(b) However, when there is a retroactive increase, reduction or severance under [38 CFR 3.105(a)], only the evaluations (including future evaluations) in any, from the effective date of change will be shown under "Conclusion" and the evaluation(s) in effect prior to the change will be shown in "Facts" (par. 49.17f(5)).

c. **Nonservice-Connected Disabilities**

(1) An effective date will be required only to furnish the effective date of permanent and total disability, and will be shown as a part of rating entitlement code 2.

(2) Evaluations for each nonservice-connected disability (without individual effective dates) will be required only as follows:

(a) When rating a claim for compensation only, evaluations will not be required for disabilities for which service connection is denied under rating code 8 (even though diagnostic codes may be required under par. 49.18a).

(b) When rating a claim for both compensation and pension or for pension only, evaluations will be required for all disabilities, both service and nonservice connected.

[(c) When rating a claim under 38 U.S.C. 314(t), evaluations will be required for both the service and nonservice connected paired extremity.]

49.20 COMBINED DEGREE AND EFFECTIVE DATE

a. When rating two or more disabilities, the combined degree will be determined from the combined table in the rating schedule, based on the stated evaluations, even when the claim is granted on the basis of unemployability (par. 49.12). When disabilities also carry historical and/or future evaluations, the combined degrees thereby determined will also be shown with appropriate effective dates.

(1) An effective date will not be required when denying a claim for pension only.

(2) A combined degree and effective date will not be required when there is only a single evaluation. In such cases, the combined degree will be entered on screen 301.

b. **When both compensation and pension entitlement are involved, the combined degree for both will be used.**

(1) **General.** When both compensation and pension entitlement are in issue, the combined degree for each will be separately shown on the rating decision with the service-connected degree first, followed on the next line by the nonservice-connected degree. An adjudicator will indicate by checkmark on the rating sheet which combined degree is required for entry on screen 301.

(2) **Pension Granted.** If pension is granted and there are two or more service-connected disabilities or, when service connection is not at issue (see par. [46.02c(1)),], the combined service-connected evaluations will also be shown as "COMB SC____%" immediately under the rating code 2 citation. (See examples No. 2 and 3, par. 49.21c.)

(3) **Compensation Granted.** Conversely, when compensation is granted and pension denied, the combined nonservice-connected degree will be shown as "COMB: NSC____%" immediately after and on the next line following the combined service-connected combined degree. (See example No. 1, par. 49.21c.)

[c. **Bilateral Factor**

(1) Whenever there are compensable disabilities affecting the use of paired extremities, regardless of location or specified type of impairment, the bilateral factor applies as provided by paragraph 26 of the rating schedule.

(a) The bilateral factor will be applied to such bilateral disabilities before other combinations are carried out.

(b) The rating will treat the bilateral disabilities as one disability (including the bilateral factor) for the purpose of arranging in order or severity and for all future combinations.

(2) The bilateral factor is for application when a specific diagnostic code provides an evaluation for a bilateral condition (for example, 30 percent for bilateral flat feet under DC 5276) and there is an independently ratable condition in one of the involved extremities (such as 20 percent for left leg muscle damage under DC 5311).

d. **Rounding.** In the event a combined evaluation should for example equal or exceed 54.5 percent, this percentage will be raised to 55 percent then adjusted upward to the 60 percent evaluation. (Also see par. 50.06.)]

49.21 LISTING DISABILITIES—RATING CODES

a. **Basic Requirements**

(1) All service-connected disabilities will be listed *first*, starting with the major disability, in descending order of *current* percentage evaluation, under the appropriate rating entitlement codes specified in appendix A.

(2) Disabilities held not service connected, similarly sequenced, will be listed next under the appropriate rating code.

(3) Disabilities denied for the following reason(s) will be shown in the discussion portion of the rating as well as in the conclusion under rating code 8 with, if applicable, the appropriate diagnostic code:

(a) Constitutional or developmental abnormality.

(b) Not found on last examination.

(c) Not shown by the evidence of record.

(d) Claim under 38 U.S.C. 351.

(4) Combined degree(s), effective date(s) and all other miscellaneous rating codes will then follow as provided in paragraph 49.20.

(5) Unless specified elsewhere, a rating code will be used only once on each rating.

b. **Grouping by Rating Codes**

(1) **Compensation Ratings.** The rating code for the current major service-connected disability will be shown first (e.g., 1.SC).

(a) All disabilities service connected, by incurrence, aggravation or presumption will be grouped under this rating code and will be shown in descending order by current percentage evaluation, without regard to period of service, or incurrence or aggravation therein.

(b) All other disabilities service connected (i.e., under 38 U.S.C. 351 and those *initially* granted service connection due to and proximately the result of a service-connected condition) will follow under rating codes 12 and 37, respectively, as found in section I of appendix A. Subsequent ratings will show those disabilities listed initially under rating code 37 under code 1.

(c) All disabilities held nonservice connected will follow the service connected, sequenced by percentage evaluation (if required, see par. 49.19c(2)), and be listed under rating code 8. The denial of a claim under 38 U.S.C. 351 will be shown under both rating codes 8 and 15, however, rating code 15 will not be brought forward on subsequent ratings.

(d) If pension is also for consideration, disabilities for which service connection was not claimed or considered will be shown under either rating code 2 or 9, as applicable.

(2) **Pension Ratings**

(a) When pension is the issue, service connection has not been placed at issue by the veteran and it is not indicated that the disability is service connected (e.g., injury resulting from a postservice automobile accident), rating code 2 showing veteran "PT" or code 9 showing veteran "Not PT" will be used.

(b) The disabilities will be identified by diagnostic code, if required by paragraph 49.18, and will be sequenced by percentage evaluation.

c. **Order of Dictation**

(1) Following the rating code, as determined in accordance with the foregoing subparagraph b, each service-connected disability (starting with the current *major* disability) will be presented in the following format.

(a) The diagnostic code will be shown immediately prior to and on the same line with the diagnosis as found from the latest medical report using the diagnostic terminology of the medical examiner. No attempt will be made to translate the examiner's terms into schedular terminology unless citation is required by way of explanation (e.g. for an analogy) or if too lengthy. A lengthy diagnosis need not be cited in full if the essential elements are retained. Residuals of diseases or therapeutic procedures will not be cited without reference to the basic disease.

(b) The individual percentage evaluation and effective date, with the period of service to which attributed and the appropriate legend for incurrence (INC), aggravation (AGG) or presumption (PRES) (e.g., "30% from 7-1-77 (WWII PRES)," will be shown immediately under the diagnosis, except that when the parenthetical entry for the period of service and appropriate legend (e.g. "(WWII PRES)") would be the same for all disabilities under the rating code, then it will be shown with the rating code (e.g. "1 SC (WWII AGG)"). When shown for each diagnostic code with the individual evaluations, the parenthetical entry will be shown with the first (historic or current) and need not be repeated with the subsequent or futures.

(2) The second and succeeding service-connected disabilities under the same rating code will be furnished in descending order of severity.

(3) This will be followed by the remaining service-connected and nonservice-connected disabilities and then by those disabilities for which service connection was not claimed or considered grouped by appropriate rating code.

(4) The combined degree(s) and effective date(s) (as required under par. 49.20) will be shown next, except that:

(a) Miscellaneous rating denial code 9 will be shown immediately after the listing of the nonservice-connected disability group, before the combined degree, only when the claim was for both compensation and pension.

(b) All other miscellaneous rating codes will then be shown, as appropriate.

EXAMPLE NO. 1: Compensation and pension claim—compensation allowed; pension denied.

1. SC

5316 GSW Muscle Group XVI, Left
30% from 11/30/61 (WW II INC)

5319 GSW, Abdomen, Muscle Group XIX
10% from 11/30/61 (KC INC)

7336 Hemorrhoids, External
10% from 11/30/61 (PTE INC)

5227	Residuals Fracture, Right 5th Metacarpal 0% from 11/30/61 (WW II INC)
6304	Malaria 0% from 11/30/61 (WW II INC)
6599-6516	Tonsillectomy 0% from 11/30/61 (PTE INC)
	8. NSC (WW II, KC, PTE)
7101	10% essential Hypertension
5295	10% Lumbosacral Strain
	9. NOT PT
COMB:	SC 40% from 11/30/61
COMB:	NSC 50%

NOTE: Care should be exercised to insure that each period of service shown with the rating codes or individual evaluation is consistent with the active duty dates shown at the top of the rating sheet.

EXAMPLE NO. 2: Compensation and pension claimed—both allowed—pension the greater benefit.

	1. SC (WWI INC)
5276	Flat Feet, Bilateral 18% PP from 12/10/29 10% from 4/1/46
	8. NSC (WW I)
6602	30% Asthma, Bronchial
7007	30% Hypertension Heart Disease
	2. PT (WW I) from 10/29/63.
COMB:	SC 18%, WW VA 1924 SC 10%, 1945 Schedule
COMB:	NSC 60%

EXAMPLE NO. 3: Pension claim based on a disability and service connection not at issue or is pending when service connection was previously considered for other disabilities.

	1. SC (VE INC)
5316	GSW, MG XVI, Left Thigh 30% from 3/4/70

6282	Defective Hearing, Left 10% from 3/4/70
	8. NSC (VE)
6602	0% Bronchial Asthma
	2. PT (VE) from 5/16/72
5205	50% Unfavorable Ankylosis, left elbow (minor)
COMB:	SC 40%
COMB:	NSC 70%

49.22 SPECIAL MONTHLY COMPENSATION AND LOSS CODES

a. **General.** Entitlement to special monthly compensation and statutory awards will be shown in the conclusion portion of the rating, immediately following the combined degree, using the appropriate rating code and phrases as set forth in appendix A to this manual.

(1) A denial of special monthly compensation whether specifically claimed by the veteran or inferred by the rating board will be explained in the discussion portion of the rating (see par. 49.17g(5)).

(2) When entitlement under 38 U.S.C. 314(k) is shown for more than one anatomical loss or loss of use, the additional specific condition will be separately cited on the rating.

(3) Any anatomical loss will be listed as the first entitlement in order of preference over all losses of use.

b. **Entry of SMC and SP Codes.** When applicable (see below), the appropriate [ ] codes from appendixes A and B of this manual will be entered in the separate blocks provided for the special monthly compensation paragraph code and for loss of use, anatomical loss and other losses. These blocks will be completed in compensation cases only.

(1) **No Entitlement Under SMC Paragraph.** If there is no entitlement under SMC paragraph, all five blocks will be left blank.

(2) **Entitlement Under SMC Paragraph.** When the SMC paragraph code is entered, positive entries must be made in the loss blocks. The SMC paragraph code applicable while hospitalized will also be entered in the block provided.

(3) **Future Entitlement Under SMC Paragraph.** If entitlement under an SMC paragraph is effective only at a future date, [the codes will be entered in future blocks] on the rating. [ ]

(4) **Retroactive Entitlement Under SMC Paragraph.** When there is retroactive entitlement under an SMC paragraph for a period *entirely in the past*, the ADP codes will be entered on the rating nor will they be required for entry.

(5) **Aid and Attendance/Housebound**

(a) **Compensation.** In a compensation rating, entitlement to regular aid and attendance or housebound will be shown by the use of the appropriate rating code immediately after the combined degree, by the entry of the necessary [ ] codes in the block for "Other Loss" on the rating, and in the "A&A or Housebound" block on the award. (Also see par. 25.17b(4) re SMC coding during hospitalization.)

(b) **Pension.** In pension cases, however, this entitlement will be shown only by the use of the appropriate rating code for aid and attendance or housebound and by the appropriate entry in the "A&A or Housebound" block on the award. (See par. 23.03c.). No entry will be required in the "Other Loss" block on the pension rating.

49.23 SPECIAL PROVISION CODES

a. **General.** Computer audits of the rating data in a master record verify that the percentage of disability assigned to each diagnostic code is one of the evaluations permitted by the rating schedule and that the combined degree is justified. There are some ratings in which, because of a special provision of the rating schedule or VA regulations, an evaluation or combined degree is assigned which would not ordinarily be acceptable. To identify these cases and to permit successful computer audits, special provision codes will be used [Special provision codes 1,2,4,5 and 7 are generated automatically when applicable and do not require entry on VA Form 21-6796.]

b. **Use of Special Provision Codes When Not System Generated**

(1) **Code 3—[38 CFR 3.321(b)].** This code will be used to indicate entitlement based on an extra-schedular evaluation under [38 CFR 3.321(b)] when individual unemployability is conceded under [38 CFR 3.321(b).] Such compensation cases will be accepted based upon the appropriate entry in the item for employability (par. 49.12) and the use of special provision code 3. Extra-schedular evaluation under specific diagnostic codes will be identified by "ES" following the code(s) involved.

(a) In all pension cases, extra-schedular permanent and total ratings will be approved by the Adjudication Officer under the provisions of [38 CFR 3.321(b)(2)] and should contain sufficient facts and discussion to show clearly the basis for the assignment of the rating.

(b) In compensation cases, extra-schedular evaluations will be approved only by the Chief Benefits Director or Director, Compensation and Pension Service, upon submission under [38 CFR 3.321(b).]

(c) If adequate employment information is not already in file, VA Form 21-527, Income—Net Worth and Employment Statement, and any other indicated evidence including recent medical examination will be obtained in [pension] cases. [VA Form 21-8940, Veteran's Application for Increased Compensation Based on Unemployability, and any other indicated evidence will be obtained in compensation cases.]

(d) When application of any provision(s) of the rating schedule or propriety of an extra-schedular rating is in question and submission to Central Office is required, a complete formal rating will be prepared in which the "Issue" will be clearly and succinctly stated.

(e) Submission under [38 CFR 3.321(b)] will be forwarded to Central Office (212A) with a notation on VA Form [00]-7216a, Request for And or Notice of Transfer of Veterans Records, that it is being submitted under that regulation.

(f) In the event of approval by Central Office, no further rating action will be required; however, local procedure should insure that whether approved or disapproved, the claims folder will be referred to the submitting rating board for review and comprehension. In the event of disapproval, rating action will not be required solely to dispose of the issue considered on the submission.

(g) To afford Central Office an opportunity to review the extra-schedular evaluations approved under subparagraph (a) above and to review the submissions under subparagraph (b) above, an extra copy of these rating decisions and submissions will be prepared and separately maintained for reviewing the field operations staff. After the copy is reviewed by the field operations staff, it may be destroyed pursuant to RCS VB-1.

[(2)] **Code 4.** When assigning an otherwise unacceptable percentage evaluation for a valid diagnostic code under [38 CFR 3.322(a).] by reason of deduction of preservice level of a disability service connected by aggravation, the specific diagnostic code will be *identified by* "US" following the code. Any percentage evaluation not in excess of the maximum permitted for that diagnostic code will be accepted [and the entering of "US" on the 301 screen will generate the special provision code 4.

(3)] **Code 6–Other or Combination.** This code will be used for computer audit acceptance of any combination of the [ ] special provision codes *and when*:

(a) A total evaluation is continued under the protection of [38 CFR 3.951] or assigned to a single disability in accordance with paragraph 16 of the rating schedule under a valid diagnostic code *(identified by alpha equivalent)* for which such percentage evaluation would be otherwise unacceptable.

(b) It will also be used for acceptance of a combined degree which is not justified by the individual evaluations; for example:

1. When graduated evaluations are assigned for two or more diagnoses of inactive tuberculosis (which may not be combined).

2. An independent respiratory condition in addition to a graduated evaluation for pulmonary tuberculosis (which may not be combined).

3. Two or more independent disabilities affecting one extremity, when the combined evaluation exceeds the maximum allowable under the amputation rule. Use of this code provides for computer audit acceptance of valid diagnostic codes at any evaluation, and a combined degree of less than the normal value of the individual evaluation.

4. Two or more separate permanent service-connected noncompensable disabilities for which a 10 percent combined evaluation may be assigned under [38 CFR 3.324.]

5. Two or more conditions which are assigned separate evaluations are considered as one for the purpose of meeting the 40 percent or 60 percent single disability requirement in paragraph 16 of the rating schedule. The discussion portion of the rating should show the basis for such consideration.

[ ]

CHAPTER 50. RATING PROCEDURE RELATIVE TO SPECIFIC ISSUES

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CHAPTER 50. RATING PROCEDURE RELATIVE TO SPECIFIC ISSUES

SUBCHAPTER 1. MUSCULOSKELETAL SYSTEM

50.01 ASCERTAINMENT OF SERVICE INCURRENCE

The results of injuries, including gunshot wounds, acquired before or after service will frequently be encountered. Substantiate the circumstances of the particular injuries which were incurred in service by official records or by other evidence as to incurrence in service in line of duty. A claimant may have been accepted for military service with a notation of one or more scars existing at time of enrollment. Subsequently, he or she may have sustained a wound, with a resulting scar, during service. Finally, after discharge from military service, he or she may have received an injury in civilian life which has resulted in a scar that would be present at subsequent physical examinations. Accordingly, exercise caution in characterizing a scar as the residual of a wound or injury incurred in military service. If there is any doubt on this point, simply describe the scar, without ascribing it to "gunshot wound," "shrapnel wound," etc. If the presence of a scar or scars is recorded in a physical examination report, review official records to ensure that the scar or scars are in fact the residuals of wounds in service. If there are any confusing data in this respect in the physical examination report, check official records against the medical examiner's statements to establish the facts.

50.02 ARTHRITIS RATINGS

a. **Rheumatoid Arthritis.** Rheumatoid arthritis, otherwise diagnosed atrophic or infectious arthritis, or arthritis deformans, is characterized clinically by limitation of motion, usually first affecting proximal interphalangeal and metacarpophalangeal joints, with atrophy of muscles, deformities, contractures, subluxations, and finally, fibrous or bony ankylosis.

(1) It occurs before middle age and is usually more or less laterally symmetrical. The onset may be acute with a febrile attack. Initial changes include periarticular and articular swelling, often free fluid, with proliferation of the synovial membrane. Atrophy of muscles begins early and increases to wasting if the disease is unchecked. Late changes include deformities and contractures, subluxations, or fibrous or bony ankylosis.

(2) Early radiographic changes include slight diminished density of bone shadow, increased density of articular soft parts, without bony or cartilaginous changes of articular ends. However, rheumatoid arthritis, and some other types of infectious arthritis, does not require X-ray evidence of bone changes to substantiate the diagnosis.

(3) Late radiographic changes are marked diminished density of bone shadow, loss of bone substance or articular ends, subluxation or ankylosis. Nutrition is poor, and emaciation may be marked. Haygarth's nodes, a fusiform enlargment of the proximal interphalangeal joints of the fingers, is an important diagnostic sign.

b. **Rheumatoid Arthritis of the Spine**

(1) Rheumatoid arthritis of the spine, also diagnosed as rheumatoid spondylitis, ankylosing spondylitis, or Marie-Strumpell disease is characterized clinically by calcification of the anterior and lateral spinal ligaments, limitation of motion of the spine due to ankylosis, diminished chest expansion with involvement of the costovertebral articulations and flattening of the lumbar curve. The sacroiliac joints are always affected showing evidence of lateral sclerosis.

(2) In the advanced stages, it is characterized by a bent-over posture, rigid spine with kyphotic deformity and waddling gait, and frequently fusion of the upper cervical and the sacroiliac joints may occur.

c. **Disability Factors in Rheumatoid Arthritis**

(1) With rheumatoid arthritis, give special attention to the following in addition to, or in advance of, demonstrable x-ray changes:

(a) muscle spasm;

(b) soft tissue changes, periarticular, and articular, such as synovial hypertrophy, villose hypertrophy, flexion contracture deformities, joint effusion, destruction of articular cartilage;

(c) constitutional changes such as emaciation, anemia, muscular and bone atrophy, skin complications, gastrointestinal symptoms, capillary stasis, imbalance in water metabolism (dehydration), vascular changes, cardiac involvement, dry joints, low renal function, postural deformities, and low grade edema of the extremities.

(2) Consider joints affected by any of the following in the rating:

(a) Synovial or villose hypertrophy, or joint effusion; severe postural changes;

(b) Scoliosis, etc.; flexion contracture deformities;

(c) Ankylosis, or limitation of motion of joint due to bony changes;

(d) Destruction of articular cartilage.

d. **Hypertrophic Arthritis.** Hypertrophic arthritis, commonly diagnosed degenerative arthritis, or osteoarthritis, is characterized clinically by limitation of motion in the late stages only.

(1) This form of arthritis typically occurs after the age of 45 and is usually asymmetrical. It has no relation to infection. The presence of "Heberden's nodes" or calcific deposits in the terminal joints of the fingers, with deformity, is diagnostic. Ankylosis is rare, but there may be hyperostoses and irregular notched articular surfaces of the joints. Destruction of cartilage, bone eburnation, and the formation of "osteophytes" constitute the diagnostic features. Flexion contracture deformities and severe disabilities described under atrophic arthrities do not occur.

(2) Early radiographic changes include delicate spicules of calcium at the articular margins, without diminished density of bone shadow, and without increased density of articular soft parts. Later, there is ridging of articular margins, hyperostoses, irregular notched articular surfaces, ankylosis only in the spine. Hypertrophic and traumatic arthritis require x-ray evidence of bone changes to substatiate their diagnosis.

(3) Bear in mind that a change of diagnosis as among the various types of arthritis, particularly if joint disease has been recognized as service connected for several years, has no significant bearing on the question of service connection. In older individuals the effects of more than one type of the disease may coexist and differential diagnosis may be difficult.

e. **Hypertrophic Arthritis of the Spine.** With particular reference to hypertrophic arthritis of the spine and pelvic joints, the same general characteristics prevail, except for rather early limitation of spine motion; chest expansion and costovertebral articulations are not usually affected; referred pain is commonly called "intercostal neuralgia" and "sciatica"; when spurs on bodies of vertebrae impinge, localized ankylosis may occur.

f. **Limitation of Motion.** Do not rate arthritis as a single disability in the conclusion of the rating decision. If there are other nonarthritic disabilities present this may result in either an under or over evaluation of the veteran's disability. Rate limitation of motion of the involved arthritic joints separately in the conclusion portion of the rating decision. Use an analagous rating for the more severely affected joint, and thereafter use only the diagnostic code which supports the assigned percentage of disability for the degree of limitation of motion present. If the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic code(s), assign a rating of 10 percent for each such major joint or group of minor joints affected by limitation of motion (see par. 45 of the rating schedule), to be combined, not added, under the appropriate diagnostic code for the type of arthritis involved. In such a case, limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion, such as flinching, facial expression, or other visible reaction. If there is x-ray evidence of degenerative arthritis, but no limitation of motion, assign either a 10 or 20 percent evaluation based on the involvement of two or more major joints or two or more minor joint groups. (See diagnostic code 5003.) However, do not combine the 10 or 20 percent ratings based solely on x-ray findings with ratings based on limitation of motion.

EXAMPLE 1: The residuals of degenerative arthritis are limitation of abduction of the right shoulder (major) to 90 degrees and limitation of flexion of the right knee to 45 degrees. Rate the case as follows:

1. SC (VE Inc)
5003-5201 Degenerative arthritis, right shoulder (major) with limitation of abduction
20% from 12-14-83
5260 Degenerative arthritis, right knee, with limitation of flexion
10% from 12-14-83
COMB: 30% from 12-14-83

EXAMPLE 2: The chronic residuals of hypertrophic arthritis are shown to be limitation of extension of the right knee to 5 degrees, pain on motion; limitation of abduction of the right shoulder to 120 degrees with no pain on motion, and limitation of flexion of the left hip to 20 degrees. Rate the case as follows:

1. SC (KC Inc)
5003-5252 Hypertrophic arthritis, left hip with limitation of flexion
30% from 6-24-83
5261 Hypertrophic arthritis, right knee, with pain on motion
10% from 6-24-83
5201 Hypertrophic arthritis, right shoulder, no pain on motion
0% from 6-24-83
43. Bilateral factor of 3.7% added for diagnostic codes 5003-5252 and 5261
COMB: 40% from 6-24-83

EXAMPLE 3: The residuals of degenerative arthritis are shown to be limitation of abduction of the right shoulder (major) to midway between the side and shoulder level. In addition, there is x-ray evidence of degenerative arthritis of both knees, without any demonstrable limitation of motion of either knee. As there is no limitation of motion of either knee, do not assign a compensable evaluation for the knees based on the x-ray evidence. Include the joints identified by x ray with the diagnostic description for the major arthritic disability.

1. SC (WWII Inc)
5003-5201 Degenerative arthritis of the right shoulder (major) with limitation of abduction, and x-ray evidence of bilateral knee involvement
30% from 6-24-83

EXAMPLE 4: The veteran has degenerative arthritis without limitation of motion of any of the affected joints. There is x-ray evidence of degenerative arthritis of both knees. Rate the case as follows:

1. SC (PTE Inc)
5003 Degenerative arthritis of the knees, x-ray evidence only
10% from 12-30-81

EXAMPLE 5: The same facts as in Example 4, except there is x-ray evidence only of involvement of the right knee. Rate the case as follows:

1. SC (PTE Inc)
5003 Degenerative arthritis, right knee, x-ray evidence only
0% from 12-30-81

g. Disposition of Arthritis Cases Previously Rated as a Single Disability. The procedures set forth above have changed from the previous requirement to rate arthritis as a "single disability." Accordingly, rating boards will encounter numerous cases where arthritis was rated as a single disability. *(NOTE: The previous procedures did not negate the instructions in 38 CFR 4.26.)* There will not be a review to identify these cases for rerating under the new procedure. Instead, cases will be rerated under the new procedure as they are encountered as follows:

(1) If the separate evaluation of the arthritic disability results in no change in the combined degree previously assigned and if a rating is required, rerate using the new procedure with the same effective date as previously assigned.

(2) If rerating using the new procedures results in an increased combined evaluation, apply 38 CFR 3.105(a) to retroactively increase the assigned evaluation. (See M21-1, par. 48.08c.)

(3) If rerating using the new procedure results in a reduced combined evaluation, apply 38 CFR 3.105(a) and (e), unless the assigned percentage is protected under 38 CFR 3.951.

EXAMPLE 1: A case is encountered where the veteran is service connected for degenerative arthritis and the arthritis was previously rated as a single disability. The previous rating board derived the combined degree of disability for arhtritis in the discussion portion of its rating decision and assigned a 30 percent evaluation for the right shoulder (major) for limitation of abduction to 45 degree, and 20 percent for the left shoulder for limitation of abduction to shoulder level. The bilateral factor of 4.4 percent was added which resulted in a combined degree of 48.4 percent for arthritis. The veteran was also 10 percent disabled for a duodenal ulcer. The conclusion portion of the prior rating was completed as follows:

	1. SC (VE Inc)
5003	Degenerative arthritis
	50% from 2-8-82
7305	Duodenal ulcer
	10% from 2-8-82
COMB:	60% from 2-8-82

On November 5, 1984, the veteran was reevaluated because of a future review examination. Current examination reveals no change in the veteran's physical condition. Apply 38 CFR 3.105(a) and (e) and rate as follows:

	1. SC (VC Inc)
5003	Degenerative arthritis
	50% from 2-8-82 to 1-31-85
5003-5201	Degenerative arthritis, right shoulder, (major) with limitation of abduction
	30% from 2-1-85
5201	Degenerative arthritis, left shoulder, (minor) with limitation of abduction
	20% from 2-1-85
7305	Duodenal ulcer
	10% from 2-8-82
	43. Bilateral factor of 4.4% added for diagnostic codes 5003-5201 and 5201
COMB:	60% from 2-8-82
	50% from 2-1-85

EXAMPLE 2: The veteran was previously assigned a 40 percent evaluation for arthritis which was derived in the discussion portion of the rating by assigning a 30 percent evaluation for severe limitation of motion of the cervical spine (diagnostic code 5290) and a 20 percent evaluation for marked limitation of motion for the right ankle (diagnostic code 5271). The veteran is also service connected for hypertension evaluated as 20 percent disabling. The conclusion portion of the previous rating was completed as follows:

	1. SC (VE Inc)
5003	Degenerative arthritis
	40% from 8-10-81
7101	Hypertension
	20% from 8-10-81
COMB:	50% from 8-10-81

On November 5, 1984, the veteran was reevaluated secondary to a claim for increase. Current examination supports the previously assigned percentage of disability, and in addition, reveals marked limitation of motion of the left ankle due to arthritis. Apply 38 CFR 3.105(a) and rerate as follows:

1. SC (VE Inc)
5003-5290 Degenerative arthritis, cervical spine
30% from 8-10-81
5271 Degenerative arthritis, right ankle
20% from 8-10-81
5271 Degenerative arthritis, left ankle
20% from 11-5-84
7101 Hypertension
20% from 8-10-81
43. Bilateral factor of 3.6% added for diagnostic codes 5271 and 5271
COMB: 60% from 8-10-81
70% from 11-5-84

NOTE: As the retroactive period is less than 5 years, Central Office approval is not required for the 38 CFR 3.105(a) action.

50.03 NOMENCLATURE OF DIGITS

Accurate specification of injured digits of the upper and lower extremities is essential. Apply the terms distal and proximal phalanges to these parts, as appropriate, with the middle phalanx, when affected, properly designated.

a. **Fingers**

(1) Refer to the phalanges of the hand as thumb, index, middle, ring, or little, and designate either right or left. Do not use numerical designations for either the fingers or joints of the fingers.

(2) Refer to the two joints of the thumb as distal and metatarsophalangeal.

(3) Refer to the three joints of the fingers as distal interphalangeal, proximal interphalangeal, and metatarsophalangeal.

b. **Toes**

(1) Refer to the phalanges of the foot as the first (great toe), second, third, fourth, or fifth, and designate either right or left.

(2) Refer to the two joints of the first (great) toe as distal and metatarsophalangeal.

(3) Refer to the three joints of the other toes as the distal interphalangeal, proximal interphalangeal, and metatarsophalangeal joints.

c. **X Rays.** If there is doubtful designation of the localization of the injury, obtain x rays to clarify the exact point of injury.

50.04 CONGENITAL CONDITIONS

Bear in mind that individual vary greatly in their musculoskeletal development and appearance, and therefore functional variations are many times seen which are attributable to the type of individual and his or her inherited or congenital variations from the so-called normal. Give careful attention to congenital or developmental defects such as absence, subluxation, deformity, or exostosis of parts, accessory or supernumerary parts. Fusion defects of the spine, especially spondylolysis, spina bifida, unstable or exaggerated lumbosacral joints or angle, or incomplete sacralization will also be noted in their congenital aspects. Do not automatically classify spondylolisthesis as a congenital condition although it is commonly associated with a congenital defect of the spine. The congenital clubhand, clubfoot, genu recurvatum or varum, and congenital talipes in various positions, require similar attention. Do not overlook congenital diastasis of the rectus abdominis, hernia of the diaphragm and the various myotonias.

50.05 OSTEOMYELITIS

a. **Constitutional Symptoms.** Constitutional symptoms are a prerequisite to the assignment of either the 100 percent or 60 percent evaluations under diagnostic code 5000. As both the 60 and 100 percent evaluations are based on constitutional symptoms neither is subject to the amputation rule.

b. **Historical Ratings.** Both the 10 percent evaluation, and that part of the 20 percent evaluation based on "other evidence of active infection within the past 5 years," are known as historical ratings and must be based upon recurrent episodes of active osteomyelitis. The 20 percent "historical evaluation" based on evidence of active infection within the past 5 years, must be distinquished from the 20 percent evaluation authorized when there is a discharging sinus.

(1) An initial episode of active osteomyelitis is not a basis for either of the historical ratings. Do not assign the 20 percent historical evaluation until the first "recurrent" episode of osteomyeletis. Then assign a 20 percent historical evaluation which will be extended for 5 years from the date of examination showing the osteomyelitis to be inactive. Assign a closed rating at the expiration of the 5-year extension.

(2) Assign the 10 percent historical evaluation only if there have been two or more recurrences of active osteomyelitis following the initial infection.

(3) Although saucerization, sequestrectomy or guttering might be successful in treating osteomyelitis, do not discontinue the historical rating since cure of the osteomyelitis may not be considered attained, unless there has been removal or radical resection of the affected bone.

(4) The following examples demonstrate proper rating procedure for osteomyelitis.

EXAMPLE 1: The veteran was diagnosed with osteomyelitis in service, with discharging sinus. At separation from service the osteomyelitis was shown to be inactive with no involucrum or sequestrum.

Discussion: As there has been no recurrence of active osteomyelitis following the initial episode in service, the historical evaluation of 20 percent is not for application. The requirements for a 20 percent evaluation based on activity are not met either.

1. SC (VE Inc)
5000 Osteomyelitis, right tibia
0% from 12-2-73

EXAMPLE 2: Same facts as in example 1, except the veteran has a discharging sinus at time of separation from service.

Discussion: The veteran meets the criteria for a 20 percent evaluation based on a discharging sinus. Schedule a future examination to ascertain the date of inactivity.

1. SC (VE Inc)
5000 Osteomyelitis, right tibia, active
20% from 12-2-73

EXAMPLE 3: Same facts as in Example 2. Subsequent review examination reveals the sinus tract was healed and there is no other evidence of active infection.

Discussion: As this is still a continuation of the "initial" episode of osteomyelitis diagnosed in service, a historical rating of 20 percent is not for application. Take rating action under 38 CFR 3.105(e).

1. SC (VE Inc)
5000 Osteomyelitis, right tibia, inactive
20% from 12-2-73
0% from 3-1-75

EXAMPLE 4: Same facts as in Example 3. The veteran is hospitalized July 21, 1976, with active osteomyelitis of the right tibia shown with discharging sinus. There is no involucrum, sequestrum, or constitutional symptoms. Upon release from the hospital the discharging sinus is still present.

Discussion: Assign the 20 percent evaluation based on evidence showing draining sinus from the proper effective date. Schedule a future examination to ascertain date of inactivity.

1. SC (VE Inc)
5000 Osteomyelitis, right tibia, active
0% from 3-1-75
20% from 7-21-76

EXAMPLE 5: Same facts as in Example 4. A routine future examination was conducted on July 8, 1977, showing the osteomyelitis to be inactive. There was no discharging sinus, no involucrum, sequestrum, or constitutional symptoms.

Discussion: The most recent episode of active osteomyelitis (July 21, 1976) constitutes the first "recurrent" episode of active osteomyelitis. Continue the previously assigned 20 percent evaluation, which was on the basis of discharging sinus, as a historical evaluation for 5 years from the examination showing inactivity.

1. SC (VE Inc)
5000 Osteomyelitis, right tibia, inactive
20% from 7-21-76
0% from 7-8-82

EXAMPLE 6: Same facts as in Example 5. In October 1979, the veteran was again found to have active osteomyelitis with a discharging sinus, without involucrum, sequestrum, or constitutional symptoms.

Discussion: Continue the 20 percent evaluation. Rerating is necessary to remove the future reduction to 0 percent, and to schedule a future examination to establish the date of inactivity.

1. SC (VE Inc)
5000 Osteomyelitis, right tibia, active
20% from 7-21-76

EXAMPLE 7: Same facts as in Example 6. A review examination was conducted on April 8, 1980. The examination showed the discharging sinus was inactive, and there was no other evidence of active osteomyelitis.

Discussion: The most recent episode of osteomyelitis (October 1979) constitutes the second "recurrent" episode of active osteomyelitis. Accordingly, the historical evaluations of both the 20 and 10 percent evaluations apply.

1. SC (VE Inc)
5000 Osteomyelitis, right tibia, inactive
20% from 7-21-76
10% from 4-8-85

EXAMPLE 8: Same facts as in Example 7. The veteran was hospitalized June 10, 1982, with a recurrent episode of active osteomyelitis. A radical resection of the right tibia was performed and at hospital discharge (June 21, 1982), the osteomyelitis was shown to be cured.

Discussion: Assign a temporary total rating of 100 percent under paragraph 30 with a 1-month period of convalescene. Following application of 38 CFR 3.105(e), reduce the evaluation for osteomyelitis to 0 percent as a rating for osteomyelitis will not be applied following cure by removal or radical resection of the affected bone.

1. SC (VE Inc)
5000 Osteomyelitis, right tibia, P.O.
20% from 7-21-76
100% from 6-10-82 (Par. 30, 1945 (S))
20% from 8-1-82
0% from 10-1-82

50.06 BILATERAL FACTOR

a. **Diagnostic Codes Providing a Bilateral Evaluation.** The bilateral factor is applied when a specific diagnostic code provides an evaluation for a bilateral condition, for example, 30 percent for bilateral flat feet under diagnostic code 5276, and there is an independently ratable additional condition in one of the involved extremities, such as 20 percent for left leg muscle damage under diagnostic code 5311. Obtain the bilateral factor by combining the two evaluations and adding 10 percent of the resultant value before proceeding with further combinations. Using the example cited above, the 30 percent and 20 percent would combine to 44 percent. The addition of 4.4 percent yields 48.4 percent, which would be adjusted upward to 50 percent. Do not apply the bilateral factor in those claims where there are two schedular bilateral evaluations in the same extremities, for example, 30 percent for flat feet and 30 percent for varicose veins.

b. **Bilateral Factor Not for Application.** Do not apply the bilateral factor unless there is a partial disability of compensable degree in each of the two-paired extremities, or paired skeletal muscles. A partial disability is defined as one that impairs the functions of an extremity when acting in consort with the paired extremity.

(1) In cases where burns and/or scars are involved, the bilateral factor is only applied if they constitute a partial disability as defined above.

(2) In cases rated for degenerative arthritis on the basis of x-ray evidence only, the bilateral factor is not applied, as there is no impairment of the function of the extremities.

(3) Apply the bilateral factor only if there are *compensable* disabilities in paired extremities. It is incorrect to assign a bilateral factor when the disability in one of the paired extremities is noncompensable, for example 20 percent disability of the right knee and a 0 percent disability of the left leg.

50.07 PYRAMIDING

It is fundamentally essential in the proper evaluation of a disability that individual findings are not to be evaluated separately when the findings in their entirety constitute one disability. For example, evaluate the disability from fracture of a tibia with malunion, limitation of dorsiflexion, eversion, inversion, and traumatic arthritis of the ankle under one diagnostic code (5262), in accordance with the effect upon ankle function, with no separate evaluation for the limitation of motion or traumatic arthritis.

50.08 MISCELLANEOUS MUSCULOSKELETAL CONSIDERATIONS

a. **Dupuytren's Contracture.** In the absence of an assigned evaluation for Dupuytren's Contracture as a disease in the rating schedule, assign and evaluation on the basis of limitation of finger movement.

b. **Impairment of Supination and Pronation.** Bear in mind the following facts when preparing ratings involving impairment of pronation and supination. Full pronation is the position of the hand flat on a table. Full supination is the position of the hand palm up. In examining limitation of pronation, the "arc" is from full supination to full pronation. The "middle" of the arc is the position of the hand, palm vertical to the table. Assign the lowest 20 percent evaluation when

pronation cannot be accomplished through more than the first three-quarters of the arc from full supination. Do not assign a compensable evaluation for limitation of pronation and also limitation of supination of the same extremely.

c. **Major Group.** With reference to paragraph 55 of the rating schedule, the term "major group" refers to the muscle group having the superior function or movement performance when compared to the function performed by an adjacent group, as shown by higher schedular evaluations for severe disability. The rules set forth under paragraph 55 apply to combinations of ratings, and are applicable only when there are ratings to combine. A slight muscle injury does not warrant evaluation of rating for any other muscle injury. If the evaluations are the same, either group may be designated "major," depending on the extent of injury to either group.

d. **Conflicting Decision re Loss of Use.** If the insurance center makes a determination on the question of loss of use of two extremities prior to rating consideration involving the same issue, and the determination conflicts with the proposed rating decision, forward the claims folder to the Director, Compensation and Pension Service (212A), under M21-1, paragraph 19.03 to resolve the conflict. This issue will generally be brought to the attention of the rating board as a result of personal inquiry, correspondence, or some indication in the claims folder that the insurance question is involved.

SUBCHAPTER II. THE ORGANS OF SPECIAL SENSE

50.09 THE EYES

a. **Refractive Error.** In considering impairment of vision from the standpoint of service connection and evaluation, it is necessary to exclude the effect of uncomplicated refractive errors. Refractive errors are due to anomalies in the shape and conformation of the eye structures, generally of congenital or developmental origin. Children are usually hyperopic at birth and subsequently become less hyperopic, emmetropic, or even myopic. In adults, refractive errors are generally stationary or change slowly until the stage of presbyopia, also a developmental condition. An exception to this rule is sometimes seen in myopia, which may be rapidly progressive during the period of service leading to destructive changes in the choroid, retinal hemorrhage, retinal detachment, etc.

b. **Defects and Aggravation.** Defects of form or structure of the eye of congenital or developmental origin, such as regular astigmatism, myopia (other than malignant or pernicious), hyperopia and presbyopia, will not, in themselves, be regarded as disabilities and may not be service connected on the basis of incurrence or progress during service.

(1) Long established policy permits service connection with such unusual developments as choroidal degeneration, retinal hemorrhage or detachment, or rapid increase of myopia, say 2 diopters in a year, producing uncorrectable impairment of vision. Irregular astigmatism may be due to corneal inflammation, injury or operation. Only under such unusual circumstances, with uncorrectable residuals, may refractive error be considered service connected.

(2) The fact that a veteran was supplied with glasses for correction of refractive error, from any of the eye defects named here, will not in itself be considered indicative of aggravation by service, entitling to compensation.

c. **Reconciliation of Inconsistent Findings.** In dealing with refractive error only, if the best corrected vision on any examination by the VA is better than prior determinations, assume these prior determinations are erroneous or, at least, as not representing best correction.

(1) Assume the condition, amblyopia exanopsia, that is, amblyopia from disuse, based on refractive error, wherein one eye has an uncorrectable visual acuity of 20/100 (6/30) or less, without evidence of disease or injury, has existed from early childhood, regardless of the prior examinations of record.

(2) Amblyopia exanopsia may also be associated with conditions other than refractive error, e.g., congenital cataract or early traumatic cataract.

d. **Etiology.** In considering active disease of the eye, give consideration to the probability of congenital origin. If the issue is service connected for retinitis pigmentosa, consider that retinitis pigmentosa is generally hereditary, and can therefore be considered to have existed prior to service. However, the etiology of retinitis pigmentosa can be on other than a hereditary basis, such as toxic or inflammatory disease origin, or on the basis of trauma. If retinitis pigmentosa is bilateral, the etiology can usually be considered to be hereditary. If it is unilateral, the etiology is usually nonhereditary. If no other cause is shown for retinitis pigmentosa, consider it to be hereditary, and determine service connection on whether or not there has been aggravation of this preexisting condition during service.

e. **Complete Diagnosis.** Do not accept as a diagnosis mere citation of impaired vision acuity, field vision, or motor field efficiency. The diagnosis must cite the actual disease or injury or other basic condition. Actual pathology, other than refractive error, is required to support impairment of visual acuity. Impaired field vision and impaired motor field function must be supported by actual appropriate pathology.

f. **Diplopia.** It is essential that a diagnosis be of record reflecting the disease or injury which is the cause of the diplopia. Apply the rating for diplopia only when it would result in a higher evaluation in comparison to the percentage of disability assigned for impairment of either visual acuity or visual field.

(1) If diplopia is diagnosed and both eyes have a ratable impairment of either visual acuity or visual field, substitute the evaluation of diplopia for the visual impairment or visual field deficit in the poorer eye, *only* if the percentage of disability for diplopia exceeds the percentage of disability assignable on the basis of visual impairment or visual field deficit in that eye.

EXAMPLE 1: The veteran is service connected for bilateral impairment of visual acuity. VA examination reveals the best distant vision obtainable after correction is 20/100 (6/30) in the right eye and 20/70 (6/21) in the left eye. Diplopia secondary to thyroid myopathy has been diagnosed in eight rectangles.

Discussion: Diplopia in eight rectangles is ratable as 20/70 (6/21). Since the vision in the poorer eye (right) is ratable at 20/100 (6/30), it is to the veteran's advantage to rate the degree of visual impairment, not the diplopia. Accordingly, rate the veteran as follows:

	1. SC (VE Inc)
6078	Visual Impairment, bilateral, with diplopia
	30% from 12-1-83

EXAMPLE 2: The same facts as in Example 1 except diplopia is present in 15 rectangles.

Discussion: Diplopia in 15 rectangles is ratable as 15/200 (4.5/60). Accordingly, since it would not be to the veteran's advantage, substitute the rating for diplopia for the degree of visual impairment 20/100 (6/30) in the poorer eye (right) and rate as follows:

	1. SC (VE Inc)
6090-6076	Diplopia with bilateral visual impairment
	40% from 12-1-83

(2) If only one eye has a ratable impairment, apply the rating for diplopia to that eye, but not in combination with any other eye rating.

EXAMPLE: The veteran is service connected for impairment of the visual field in the right eye secondary to trauma. The average contraction of the visual field is to 10 degrees, and is ratable equivalent to 20/200 (6/60) at 20 percent. Diplopia has been diagnosed secondary to trauma, and is present in 17 rectangles.

Discussion: Since diplopia in 17 rectangles is ratable equivalent to 10/200 (3/60), it is advantageous to rate the diplopia rather than the average concentric contraction. Assign a 30 percent evaluation under diagnostic code 6090-6077 for diplopia with impairment of the visual field, right eye. *DO NOT* assign a separate 20 percent evaluation for the contraction of the visual field.

1. SC (VE Inc)
6090-6077 Diplopia, with impairment of visual field, right eye.
30% from 12-1-83

g. **Impairment of Both Central Vision and Field Vision.** If, in addition to the difficulties between distant and near visual acuities mentioned in paragraph 84 of the rating schedule, there are other impairments of both best-corrected central visual acuity and fields of vision, request an examination. The examination must include best-corrected central visual acuity at near and far by the Snellen method, or its equivalent; i.e., Jaeger or Point, will be used together with fields of vision with accurate plotting of any scotoma. Following completion of the examination, refer the claims folder for evaluation of visual efficiency to the Director, Compensation and Pension Service (211C).

h. **Fields of Vision.** If the extent of the fields of vision is measured by the Goldmann bowl perimeter, and not a tangent screen, employ the Target III/4e in the kinetic mode. In all claims, perimeter type, illuminating light level, test object size, color and test distance shall be recorded with testing done, unseen to seen, with at least 16 meridians, 22½ degrees apart, charted for each eye. If the above guidelines are adhered to, the results will equate to those found by the method of testing required in the rating schedule, paragraph 76. The revised Physician's Guide will contain this alternate method using the Goldmann bowl perimeter as well as the tangent screen method.

[i. **Glaucoma.** Glaucoma is now recognized as an organic disease affecting the nervous system. Therefore, it is subject to presumptive service connection under 38 CFR 3.309(a). Consider glaucoma manifested to a compensable degree within 1 year of separation from an entitling period of service to have been incurred in such service unless there is affirmative evidence to the contrary or evidence that a recognized cause of the condition was incurred between the date of separation from service and the onset of the disability. Since this constitutes a liberalizing VA issue, October 6, 1988, the date of the Department of Veterans Benefits letter to all field stations concerning the matter, is the controlling date with regard to applying the provisions of 38 CFR 3.114(a).]

50.10 EXTENSION OF AURAL INFECTION

[If] a disease of one ear, such as chronic catarrhal otitis media or otosclerosis is held as the result of service as to a unilateral condition, the subsequent development of similar pathology in the other ear must be held due to the same cause, provided, of course, that the time element is not manifestly excessive (a few years at most) and there has been no intercurrent infection to cause the additional disability. With continuous service-connected infection of one or more parts of the upper respiratory tract, extend indefinitely the time cited for the purpose of service connecting infection of the second ear.

50.11 RATING OF HEARING IMPAIRMENT

a. **Auditory Acuity-Normal Limits of Hearing.** In consideration of service connection, hearing is within normal limits under ISO (ANSI) values when the speech reception threshold is less than 26 decibels and the discrimination score is higher than 92 percent, *and*-when the pure tone thresholds in the 250-500-1000-2000-4000 Hertz range are all less than 40 decibels with at least 4 of the frequencies 25 decibels or less.

EXAMPLE: A veteran has claimed service connection for a hearing loss. A VA examination was conducted and demonstrates normal limits of hearing as defined in paragraph 50.11. The veteran has a 50 decibel loss at the 6000 Hertz level, bilateral.

Discussion: Deny service connection for bilateral hearing loss. Hearing is within normal limits as defined in paragraph 50.11, which only considers pure tone thresholds in the 250-500-1000-2000-4000 Hertz range.

b. **Audiology Clinics**

(1) All examinations in impaired hearing claims will be ordered in audiology clinics authorized by the Chief Medical Director. They will be reviewed and summarized by a Chief, VA Audiology and Speech Pathology Clinic.

(2) The summary, presented on VA Form 10-2464, Summary Report of Examination for Loss of Organic Hearing Acuity, will include one set of tests results for each ear, and will be in terms of one of the following:

(a) Speech reception threshold in decibels and speech intelligibility score in percent discrimination.

(b) Pure-tone-air-conduction audiometry (decibel losses at 500, 1000 and 2000 [Hertz)]

(3) In each claim the results reported will be those representing the final determination of the true organic hearing impairment of the two ears separately.

(4) Base ratings on the test results reported by the Chief, VA Audiology and Speech Pathology Clinic on VA Form 10-2464.

(a) However, this does not relieve the members of the rating board of the responsibility of analyzing the various tests performed in the examination before assigning an evaluation.

(b) It is the further responsibility of the rating board members to challenge the selection of a test shown on the VA Form 10-2464 where in their analysis of the examination report, the test selected does not in their judgment represent the true organic hearing impairment.

(5) In this connection, particularly question those claims in which speech reception findings are reported on the VA Form 10-2464 as ratable at 0 percent if the pure tone audiogram reveals minimal low frequency loss with significant loss in the high frequencies, ratable at 10 or 20 percent. The rating by pure tone audiometry may be more representative of the hearing level as this type of case is generally representative of sensorineural hearing loss.

EXAMPLE: The Chief, VA Audiology and Speech Pathology Clinic, has selected speech reception test results, ratable at zero percent, and the pure tone audiometry test reveals minimal low frequency loss, but significant and increasing loss in the higher frequencies, ratable at 10 percent or 20 percent. A typical picture of such pure tone tests resulting in a sloping audiogram might appear as follows:

RIGHT				LEFT			
Hertz	500	1000	2000	Hertz	500	1000	2000
Decibel Loss	25	30	50	Decibel Loss	25	35	55

In accordance with table VII of the rating schedule, these pure tone tests result in a literal designation of "B" for each ear and, if used, would qualify for a 10 percent evaluation under diagnostic code 6295.

Discussion: Question the selection of the speech reception test, and refer the claim to the clinic chief for explanation and reconciliation.

(a) In any claim where the test selected is subject to challenge, refer the claim to the Clinic Director for reconciliation and if there is a failure of reconciliation refer the case to Central Office [(214D)] for [an] advisory opinion.

(b) If the Chief, VA Audiology and Speech Pathology Clinic reports that sufficient cooperation on the part of the veteran could not be secured to permit an accurate report on organic hearing impairment, the Chief, VA Audiology and Speech Pathology Clinic will furnish with the examination report a statement of supportive reasons and facts for the conclusions, including evidence of willfulness, in order that the rating board may determine what additional action is necessary, including suspension of compensation for organic hearing impairment if it is determined that lack of cooperation was due to willfulness.

c. **Examinations**

(1) Do not accept audiometric examinations conducted at facilities other than authorized Audiology and Speech pathology Clinics for rating compensation claims.

(a) Excepted from this rule are cases of veterans residing in foreign countries or in remote areas outside the continental limits of the U.S.A. and Alaska where the services of an authorized Audiology and Speech Pathology Clinic are not available without unusual inconvenience to the veteran and expense to the Government. In these cases where an adequate examination of hearing loss can be conducted at a facility other than an authorized Audiology and Speech Pathology Clinic, accept the report of such examination for rating.

(b) The report of examination at an alternate facility must include as a minimum an otological examination and test results of pure-tone-air-conduction audiometry.

(c) Prior to rating, the report of hearing examination conducted at the alternate facility must be reviewed by the chief of an authorized Audiology and Speech Pathology Clinic for adequacy, and for adherence to ISO (ANSI) norms, and completion of the summary report, VA Form 10-2464.

(2) In pension claims, accept audiometric examinations conducted at facilities other than authorized Audiology and Speech Pathology Clinics for rating purposes if the examination report has been reviewed by the chief of an authorized Audiology and Speech Pathology Clinic.

(a) Request examinations at authorized Audiology and Speech Pathology Clinics only under the most unusual circumstances (e.g., a veteran less than 40 years of age who claims profound deafness as his or her only significant disability).

(b) Audiology and Speech Pathology Clinic examinations in pension claims require rating board consideration.

d. **Revised Hearing Loss Rating Tables.** The Department of Medicine and Surgery ceased converting audiology examinations to ASA standards after December 31, 1975. Consequently, apply rating tables in effect prior to September 9, 1975, to all examination results dated before January 1, 1976. Effective January 1, 1976, audiology examinations utilize ISO/ANSI standards exclusively, and evaluation tables VI and VII for hearing loss are applicable. If retroactive evaluations are in issue, exercise great care in ascertaining that tables VI and VII and the examination results are both predicated on identical standards. Otherwise, improper evaluations will result.

e. **Induction and Separation Examinations.** Use reports of examinations at enlistment and discharge, reflecting ability to hear conversational voice in feet, in determining aggravation. For this purpose, determine evaluations on the basis of equivalent adjusted speech audiometry decibel loss as described in table VII of the rating schedule.

f. **Separate Ratings for Hearing Loss and Otitis Media.** In view of the necessity of coding all service-connected disabilities, including noncompensable ones, evaluate separately the hearing loss and suppurative otitis media.

50.12 FUNCTIONAL DISTURBANCES IN HEARING IMPAIRMENT CASES

a. **Little or No Organic Loss.** If, following examination at an audiology clinic, a drastic reduction in rating for a hearing impairment is in order, thoroughly review the claims folder for evidence of a psychiatric disease entity which might be manifested in part by a nonorganic hearing impairment.

b. **Service Connection for Functional Hearing Impairment.** Determine entitlement to service connection for a psychiatric disability manifested in part by a hearing impairment by the usual regulations pertaining to the grant of service connection. It is anticipated the psychiatric disorder will be identifiable by manifestations other than those relating to hearing complaints alone. If service connection is warranted, and manifestations of organic and functional disability are predominately hearing impairment, base the rating either on the organic hearing loss or the psychiatric disorder, but not in combination.

50.13 SCHEDULING FUTURE EXAMINATIONS IN HEARING CASES

If initial ratings are based on audiology clinic examinations, schedule future examinations, if in order, in accordance with 38 CFR 3.327. If based on other than audiology clinic examination, see paragraph 50.11c. No exception to the requirements of 38 CFR 3.327 is recognized merely because the examination was conducted at an audiology clinic.

a. **Permanence.** If the extent of hearing loss in an individual claim has been satisfactorily established by an examination in an authorized Audiology and Speech Pathology Clinic, do not routinely schedule reexamination. A single Audiology and Speech Pathology Clinic examination is sufficient to meet the qualifying conditions for permanence under 38 CFR 3.327, except in the following cases:

(1) If the veteran has hearing loss evaluated at 80 percent under diagnostic code 6277 with a literal designation of F&F, permanency can be conceded and special monthly compensation granted, unless extenuating circumstances are present. If the hearing loss is functional; i.e., psychogenic, schedule at least one future examination to ensure that permanency is established before granting special monthly compensation.

(2) If there is evidence that the deafness is likely to improve materially in the future, schedule a reexamination. Include justification for such reexamination in the discussion portion of the rating decision.

(3) If the veteran has had middle ear surgery, consider that hearing acuity will have reached a stable level 1 year after surgery. Accordingly, under 38 CFR 3.327, schedule reexamination for 1 year after such surgery.

b. **Changed Criteria.** If the decrease in evaluation is due to changed criteria or testing methods, rather than a change in disability, apply the old criteria and make no reduction.

SUBCHAPTER III. SYSTEMIC CONDITIONS

50.14 TROPICAL DISEASES

a. **Specific Tropical Diseases.** The following tropical diseases among others may require attention in view of incidence in areas of foreign service: Cholera; amebiasis; dracontiasis; dysentery (bacillary); filariasis (Bancroft's type); Hansen's disease (leprosy); hookworm infection; leishmaniasis including kala-azar; malaria; blackwater fever; onchocerciasis; oroya fever; pinta; plague; relapsing fever; loiasis; schistosomiasis; yaws; and yellow fever.

(1) Medical rating specialists should familiarize themselves, from standard treatises, with the locality, incubation period, and residuals of these tropical diseases.

(2) Rate amebiasis and schistosomiasis under the digestive system; oriental sore and espundia (Old World cutaneous and American mucocutaneous leishmaniasis), pinta and veruga peruana, a late residual of oroya fever, under the disease of the skin; and onchocerciasis under the sense organs.

b. **Incubation Period of Tropical Diseases**

(1) Tropical diseases having long incubation periods are kala-azar (visceral leishmaniasis) which may extend to 1 year, oriental sore (cutaneous leishmaniasis) which may extend to 18 months, and some of the filariases which may extend from 8 to 12 months. Others are loiasis (calabar swelling), to 3 years, oracontiasis (Guinea worm disease), to 14 months and leprosy, to 5 years or more. The period for amebiasis may extent to several months.

(2) When considering service connection for tropical disease not of record during service, always consider tropical residence other than during military service, and consult standard texts as to locality of endemicity, early symptoms and course, periods of incubation, etc.

c. **The Malaria Rating.** Evaluations for malaria based exclusively on recurrences or relapses will be, as provided in the note under diagnostic code 6304 in the rating schedule, for a period of 1 year only. Assign a closed rating; i.e., the rating will show beginning and ending dates. Apply closed ratings to each of the yearly ratings, covering the original period of 12 months as well as the extensions to 24 and 36 months.

(1) When a rating is assigned, whether for the original 12 months or on extension to 24 months, notify the veteran of the ending date and state that the rating will not be extended unless medical proof of relapses is seasonably submitted.

(2) Upon extension of rating to 36 months, notify the veteran of the requirements to be met as set forth in page 65-R, rating schedule.

(3) A compensable rating from date of discharge is not in order when there is shown only one attack of malaria in service followed by recovery without relapse within 1 year. However, if the veteran has served in an endemic area and a malarial attack is shown to have occurred within 1 year prior to discharge from service or within 1 year subsequent thereto, consider such attack as a relapse or recurrence, and assign a compensable evaluation for a period of 1 year.

d. **Rheumatic Fever.** Rheumatic fever is an acute, subacute, or chronic systemic disease. For unknown reasons it may either be self-limiting, or lead to slowly progressive valvular deformity.

(1) Complications of rheumatic fever include cardiac arrhythmias, pericarditis, rheumatic pneumonitis, pulmonary embolism, and infarction, valve deformity and, in extreme cases, congestive heart failure.

(2) The prognosis for life is good. If the age of onset is postadolesence, residual heart damage occurs in less than 20 percent of the cases, and is generally less severe than if the onset is during childhood. Mitral valve insufficiency is the most common residual.

SUBCHAPTER IV. THE RESPIRATORY SYSTEM

50.15 EXTENSION OF INFECTION

Chronic upper air passage infections, such as chronic rhinitis, chronic sinusitis, chronic middle ear disease, chronic tonsillitis, and chronic laryngitis, where two or more coexist, are commonly part of one infectious process, but over a period of years, the probability of causation by separate types of organism is to be given due weight.

a. **Multiple Upper Respiratory Tract Conditions.** If all conditions do not originate in service, there must be fairly continuous evidence of infection in one or more parts of the upper respiratory tract to warrant service connection for other conditions first manifested after discharge. Carefully consider the character of the infection and intervening causes.

b. **Subsequent Diseases of the Lower Respiratory Tract.** There may be a close relationship between disease of the upper air passages and a subsequently developing chronic process in the lower respiratory tract, especially the bronchi, but here again, require continuous infection in the upper tract as a condition of service connection for a later developing infection in the lower tract.

50.16 TUBERCULOSIS CLASSIFICATION STANDARDS

Rating specialists shall familiarize themselves with the following classification standards adopted by the American Lung Association under the Diagnostic Standards and Classification of Tuberculosis and other Myobacterial Diseases, 1974:

a. **Tuberculosis Suspect.** An individual may be so classified until diagnostic procedures are complete. The classification should not be used for more than 3 months.

b. **Other Mycobacterial Diseases.** In general, disease caused by other mycobacteria is indistinguishable clinically, radiologically and histologically from M. tuberculosis. A definite diagnosis requires (1) evidence of disease, such as an infiltrate visible on a chest roentgenogram, with no other cause established by careful clinical and laboratory studies and (2) either (a) isolation of the same strain of mycobacteria repeatedly or (b) isolation of the mycobacteria from a closed lesion from which the specimen has been collected and handled under sterile conditions.

(1) Mycobacteria that may commonly be involved as pathogens are M. kansasii, M. intracellulare, and M. scrofulaceum. M. bovis is rarely responsible for disease where there is effective control of tuberculosis in cattle and pasteurization of milk and milk products; this species is undistinguishable from M. tuberculosis except by culture. With certain modifications, the classification for tuberculosis is adaptable for classifying other mycobacterial diseases. There is no need to use the first three categories used for tuberculosis — that is, no exposure, not infected; exposure, no evidence of infection; and infection, without disease.

(2) Diagnosis of mycobacterial infection by skin test is not possible. The current antigens for these mycobacteria have high cross-reactivity (low specificity).

50.17 RATING PROCEDURE FOR ARRESTED TUBERCULOSIS

a. Ratings in Effect After August 19, 1968. If pulmonary tuberculosis is established after August 19, 1968, show the 100 percent evaluation for 1 year after date of inactivity established under 38 CFR 3.375(a). Thereafter, apply the general rating formula for residuals set forth in the rating schedule following diagnostic code 6728.

b. Graduated Ratings for Ratings in Effect on August 19, 1968

(1) Grant a total evaluation for 2 years after the date of "complete arrest" (inactivity) established under 38 CFR 3.375(a), followed by graduated reductions to 50 percent and 30 percent for the periods of 4 and 5 years, respectively, as set forth under the general rating formula following diagnostic code 6724 of the rating schedule. After the expiration of this 11-year period, continue the 30 percent evaluation when there were far advanced active lesions and a 0 percent evaluation in claims.

(2) Do not request an examination for rating purposes during the period covered by the graduated ratings. Medical authorities will notify the Adjudication Division of a veteran's failure to follow prescribed treatment, or to submit to examination requested for treatment purposes during the period of total disability following complete arrest of the tuberculosis. Upon receipt of such notification, reduce the 100 percent evaluation to 50 percent by rating action and adjust the veteran's award as of the date of the last payment (38 CFR 3.655). However, if the veteran complies with the request for examination during the original 2-year timeframe for the 100 percent graduated rating, restore the 100 percent rating effective as of the date of reduction.

(3) The immediate reduction of the 100 percent evaluation upon failure to submit to examination or follow prescribed treatment is applicable only when the tuberculosis has reached a stage of complete arrest (inactivity). Payments will not be suspended or terminated merely because a veteran with active tuberculosis receives an irregular discharge. Compensation payments are based upon the degree of disability, and not on the basis of a veteran's willingness to accept treatment. In such a case, continue the 100 percent rating based on activity and request an examination 6 months from the date of irregular discharge. If the veteran fails to report for this examination, consider the tuberculosis to be completely arrested from the date of failure to report for examination. Apply the provisions of graduated ratings based upon inactivity from this date.

EXAMPLE 1: A veteran is rated 30 percent based upon residuals of far advanced, inactive, pulmonary tuberculosis. The rating for tuberculosis was in effect on August 19, 1968. The tuberculosis became active on September 10, 1977.

Discussion: Based upon the reactivation of pulmonary tuberculosis, reinstate the 100 percent evaluation for active tuberculosis and maintain control to ascertain the date of inactivity.

1. SC (KC Pres)
6701 Tuberculosis, pulmonary, chronic, far advanced, active
30% from 8-1-64
100% from 9-10-77

EXAMPLE 2: Same facts as in Example 1. Examination reveals tuberculosis was inactive as of May 10, 1978.

	1. SC (KC Pres)
6721	Tuberculosis, pulmonary, chronic, far advanced, inactive
	100% from 9-10-77
	100% from 5-10-78
	50% from 5-10-80
	30% from 5-10-84

EXAMPLE 3: Same facts as in Example 2. Medical authorities provide notification of the veteran's failure to submit to examination for treatment purposes. The date of last payment was July 1, 1979.

	1. SC (KC Pres)
6721	Tuberculosis, pulmonary, chronic, far advanced, inactive
	100% from 5-10-78
	50% from 7-1-79
	30% from 7-1-83

EXAMPLE 4: Same facts as in Example 3. Medical authorities provide notification the veteran has reported for examination on March 10, 1980. The tuberculosis remains inactive.

	1. SC (KC Pres)
6721	Tuberculosis, pulmonary, chronic, far advanced, inactive
	100% from 5-10-78
	50% from 7-1-80
	30% from 5-10-84

c. **Chest X-Rays Under 38 CFR 3.370 AND 3.371.** If active pulmonary tuberculosis is claimed to be service connected and entitlement is not otherwise established consider x-ray evidence and refer to this in the rating summary.

(1) For direct service connection, all service films are required, and for presumptive service connection at least the discharge film or a service film used for this is necessary, together with an adequate number of postservice films to resolve the issue.

(2) It is imperative that reports of x-ray interpretations be adequate for rating purposes. Therefore, when requesting an interpretation of x-ray evidence use VA Form 21-4198, with particular attention to instruction 1, part H of this form.

(3) If it is clear that a claim should be developed for pension entitlement only, do not follow this procedure.

d. **Claims Based on Positive Tuberculin Reaction.** (See par. 22.02b.)

50.18 REFERRAL OF REQUESTS FOR X-RAY INTERPRETATION

Only designees of the Chief Medical Director are authorized to make interpretations of x-ray films for the purpose of paragraph 50.13c. Refer requests for interpretations to the outpatient clinic for the local station. If the local clinic is not authorized to make such interpretations, its Director will keep the Adjudication Division currently informed of the location of the designated interpreter for the station area. In such a case refer requests directly to such other clinic, center or hospital.

50.19 EVALUATION OF SPONTANEOUS PNEUMOTHORAX

Under diagnostic code 6814, an evaluation of 100 percent is provided for 6 months for spontaneous pneumothorax. Apply this evaluation only when there is a total spontaneous pneumothorax. Evaluate incomplete or partial spontaneous pneumothorax analagous to asthma.

SUBCHAPTER V. THE CARDIOVASCULAR SYSTEM

50.20 THE HEART

a. **Congenital Heart Disease.** The term covers common heart conditions due to prenatal influences, such as patent foramen ovale, patent ductus arteriosus, coarctation of the aorta, intraventricular septal defect, and other congenital conditions.

b. **Arteriosclerotic Heart Disease.** Arteriosclerotic heart disease, also diagnosed ischemic heart disease and coronary heart disease is a disease of the heart due to diminution of blood supply to the heart muscle on account of arteriosclerotic narrowing of the lumen of one or both coronary arteries. Service connect any sudden development, during service, of coronary occlusion or thrombosis. However, mere identification of coronary heart disease upon routine examination early in service is not a basis for service connection.

c. **Hypertensive Vascular Disease.** The cause of hypertension is unknown in the vast majority of cases. Do not rate elevation of systolic blood pressure due to aortic insufficiency or thyrotoxicosis and elevation of systolic or diastolic blood pressure due to nephritis separately from the primary disease. A hypertension may exist for years without causing symptoms. On the other hand, if sufficiently severe, it may so increase the cardiac load as to result in hypertrophy of the cardiac muscle or in cardiac dilation and decompensation.

(1) If the hypertension is long continued, there may occur an arteriosclerosis of uneven distribution which often involves the vessels of one organ to a greater degree than those of the rest of the body. If it is of sufficient degree to cause significant impairment of the circulation to the organ, it will cause symptoms in accordance with the organ involved and with the degree of impairment. In the brain it may cause symptoms and signs warranting a diagnosis of cerebral arteriosclerosis or thrombosis with hemiplegia. A nephrosclerosis may occur with impairment of renal function. In the heart myocardial damage or coronary occlusion may result. But it should be kept in mind that arteriosclerosis occurs with advancing age without a preexisting hypertension, and it may occur in some younger individuals who are predisposed to arterial changes. The existence of an arteriosclerosis does not therefore imply or indicate a previous hypertension.

(2) If any of the above-mentioned arteriosclerotic manifestations are diagnosed in a veteran who presents a service-connected hypertension, hold him/her to be service connected through his/her relationship to the hypertension.

d. **Rheumatic Heart Disease.** Chronic rheumatic heart disease results from a single or repeated attacks of rheumatic fever which produce rigidity and deformity of the cusps, fusion of the commissures, or shortening and fusion of the chordae tendineae. The earliest evidence of organic valvular disease is a significant murmur. The earliest evidence of hemodynamically significant valvular lesions is found on x-ray, fluroscopy, and ECG study, since these will reveal the earliest stages of specific chamber enlargement. With a history of rheumatic fever in service, an aortic valve insufficiency manifest some years later without other cause shown will be service connected.

e. **Coexisting Forms of Heart Disease.** Accepted medical principles do not concede an etiological relationship between rheumatic heart disease, and either hypertensive or arteriosclerotic heart disease.

f. **Rheumatic Heart Disease and Hypertensive or Arteriosclerotic Changes.** Base additional compensation for hypertensive or arteriosclerotic heart disease developing after the presumptive period following discharge on the inability to satisfactorily dissociate or separate the effects of the conditions for rating purposes, rather than on the mere presence of arteriosclerotic or hypertensive heart disease.

(1) In the absence of a verified rheumatic heart disease, such as valve pathology, or weakened heart muscle (congestive heart failure), the subsequent hypertensive and arteriosclerotic changes can be successfully dissociated, and service connection denied for these changes.

(2) If verified rheumatic heart disease has been demonstrated, the effect of subsequent onset of hyperptensive or arteriosclerotic heart disease which may also produce heart muscle changes and congestive failure cannot be satisfactorily dissociated from the rheumatic changes. Evaluate the combined cardiac disability as one entity under the service-connected rheumatic heart disease code.

(3) However, since medically there is no recognized etiological relationship between rheumatic heart disease and the later developing hypertensive or arteriosclerotic changes, do not extend service connection to systemic manifestations or arteriosclerosis in areas remote from the heart.

g. **Cardiovascular Disease.** Ischemic heart disease, or other cardiovascular disease (including hypertension) which develops subsequent to the service-connected amputation of one lower extremity at or above the knee, or service-connected amputations of both lower extremities at or above the ankles, shall be held to be the proximate result of the service-connected amputation or amputations. (See 38 CFR 3.310(b).)

h. **Temporary Total Ratings.** If the veteran is hospitalized for a cardiac condition warranting the assignment of a 100 percent evaluation for 6 months, reduce the total evaluation 6 months from the first of the month following hospital discharge.

50.21 VARICOSE VEINS

a. **Service Connection for Bilateral Varicose Veins.** If service connection for varicose veins in one leg has been properly granted, either on the basis of direct service incurrence or by reason of aggravation, service connect varicose veins subsequently developing in the other leg within 3 years from the day following date of discharge from service, in the absence of an established intercurrent cause.

b. **Varicose Veins and Phlebitis.** With severe varicose veins, tests to determine impairment of deep return circulation are essential, as the superficial varicosities may be caused by the impairment of deep return circulation. Phlebitis may also occur as a complication of varicose veins, and in such an instance, assign the appropriate higher evaluation for either varicose veins or phlebitis.

c. **Varicose Veins and Arteriosclerotic Obliterans.** There is no causal or etiological relationship between varicose veins and arteriosclerotic obliterans. Accordingly, if a veteran is service connected for varicose veins, and subsequently develops arteriosclerotic obliterans without a showing of arteriosclerotic changes in service, or within the presumptive period, deny service connection for the arteriosclerotic changes.

SUBCHAPTER VI. THE DIGESTIVE SYSTEM

50.22 GASTROINTESTINAL DISORDERS AND TROPICAL SERVICE

If the issue is service connection for dysentery, or other gastrointestinal diseases, assign great weight to any tropical service, imprisonment or internment under unsanitary conditions, or food deprivation, as such service may have been the etiological or aggravating factor.

50.23 INGUINAL HERNIA

Do not assume the preexistence of actual hernia except on the basis of factual evidence. Thus initial manifestation of actual hernial protrusion in service is generally a sufficient basis for service connection, as is (by aggravation) recurrence during service of a hernia previously operated on or repaired. However, operation for repair of preexisting inguinal hernia is not, in itself, evidence of aggravation.

50.24 RECURRENCE OF HEMORRHOIDS

If hemorrhoids have been properly service connected, service connect subsequent recurrences.

50.25 INFECTIOUS HEPATITIS

a. **Definition of Infectious Hepatitis.** This diagnostic term includes epidemic infectious (Viral) hepatitis, often called "catarrhal jaundice," and homologous serum hepatitis. The disease is common throughout the world and was especially noted in World War II, following administration of yellow fever vaccine in 1942 and in the Mediterranean Theater. Service connection will generally depend upon record or other evidence of the disease in service; however, the incubation period for the former type is form 15 to 50 days, the latter 50 to 180 following administration of vaccines or transfusions. Following recovery from the acute infection, there may follow a clinical syndrome of gastrointestinal symptoms, intolerance for fats, fatigue, and mental depression. These recurring episodes last from 1 to 4 months at varying intervals. They are precipitated by intercurrent infections and overexertion. Liver function tests are of particular importance in initial diagnosis and when the disability is servere.

b. **Acute Infectious Hepatitis.** If acute infectious hepatitis is incurred in service, but is shown as cured, healed, or asymptomatic at discharge, deny service connection.

(1) The medical report of cured, healed, or asymptomatic must be supported by an official examination which must include the necessary laboratory tests establishing the absence of residual conditions. If the service medical records do not contain such an examination, schedule a VA examination.

(2) If service connection cannot be allowed, exercise caution in notifying the veteran of the decision. Inform the veteran that service connection was denied because no residual disability attributable to hepatitis was shown by the evidence of record and that if he/she has evidence of the existence of residuals, to submit it promptly for further consideration.

SUBCHAPTER VII. GENITOURINARY SYSTEM AND GYNECOLOGICAL CONDITIONS

50.26 DEFORMITY OF PENIS WITH LOSS OF ERECTILE POWER

Two requirements must be met before the 20 percent evaluation can be assigned for this condition under diagnostic code 7522. Not only must there be deformity, but the deformity must be accompanied by loss of erectile power. In evaluating residuals of either multiple sclerosis or diabetes mellitus where loss of erectile power is shown, but penile deformity is not present, it is proper to grant service connection for loss of erectile power (rated analagous to diagnostic code 7522). Also award entitlement for special monthly compensation for loss of use of a creative organ. However, in the absence of penile deformity, the disability is noncompensable. If a prosthetic implant restores erectile and ejaculatory powers, terminate SMC under 38 CFR 3.105(e).

50.27 RESECTION OR REMOVAL OF THE PROSTATE GLAND

Diagnostic code 7526 provides for a minimum 20 percent evaluation after resection or removal of the prostate gland. The minimum evaluation is for application following a total prostatectomy. TUR (Transurethral resection) of the prostate gland and conservative open prostatectomy, whether of suprapubic, retropubic or perineal type, does not automatically establish the minimum 20 percent evaluation. Assign asymptomatic residuals of TUR of the prostate gland, or conservative open prostatectomy, a noncompensable evaluation.

50.28 EVALUATION OF DISEASES OF THE HEART AND NEPHRITIS

Do not assign separate ratings for disability from disease of the heart, and any form of nephritis on account of the close interrelationship of cardiovascular diseases. There are two exclusions to this rule:

a. If there is an absent kidney, even if removal was required because of nephritis, evaluate the absent kidney, and any heart disease separately.

b. If chronic renal disease has progressed to the point where regular hemodialysis is required, evaluate any coexisting heart disease separately. In this example, the complete renal failure necessitating regular hemodialysis is considered essentially the same as an absent kidney in subparagraph a above.

50.29 PERMANENT RESIDUALS OF VENEREAL DISEASE OR AIDS

Do not consider specific residuals of venereal disease, or AIDS (Acquired Immune Deficiency Syndrome), to be the result of willful misconduct. Service connection for residuals of venereal disease will be determined by the same general principles applicable to the resolution of the issue of service connection for other diseases.

50.30 ONSET OF MENOPAUSE

There is no age criteria to establish menopause for rating purposes. Whether or not menopause has been reached will depend upon the facts in the particular case. Elicit a detailed history as to loss of menses to determine if menopause occurred prior to the onset of the disease entity. (See 38 CFR 4.116.)

SUBCHAPTER VIII. HEMIC AND LYMPHATIC SYSTEMS

50.31 SICKLE CELL DISEASE

a. **General.** Sickle cell anemia is a hereditary and familial disorder characterized clinically by symptoms of anemia, arthritis, leg ulcers, and acute attacks of pain. It is distinquished by the presence of peculiar sickle-shaped, or oat-shaped, red blood cells, signs of excessive blood destruction and active blood formation, and repeated vaso-occlusive episodes. The phenomenon of sickling of red cells is a hereditary abnormality which of itself usually produces few ill effects. Sickle cell anemia, however, is a morbid state characterized by hemolytic anemia and the above manifestations.

b. **Sickle Cell Trait.** The presence of sickle hemoglobin (Hb S), a variant of the normal hemoglobin in human red blood cells, is subject to the usual mechanisms of biologic inheritance. Inheritance may be from one or both parents. If sickle hemoglobin is inherited from one parent and normal hemoglobin from the other, the combination (Hb S + Hb A) is referred to as sickle cell trait. Except for unusual circumstances, this is a benign asymptomatic condition and is not associated with increased morbidity.

c. **Sickle Cell Anemia.** Inheritance of sickle hemoglobin from each parent results in the combination (Hb S + Hb S) referred to as sickle cell anemia. It is usually accompanied by moderate to severe anemia, and appropriate clinical signs and symptoms. The age of onset is generally early childhood.

d. **Sickle Cell Disease.** Sickle cell disease is a generic term for all disorders characterized by the presence of S hemoglobin in the red blood cell. It includes sickle cell anemia (S); sickle cell trait (S and A); and other hemoglobinopathies such as sickle cell-thalassemia and sickle cell C disease.

e. **Rating Considerations.** Service connection for sickle cell disorders, as distinquished from uncomplicated sickle cell trait, may not be denied as hereditary, racial or familial in character. Determine service connection on the evidence as to symptomatology prior to enlistment with a comparative study of the chronicity and severity in service and at discharge. Base a determination as to aggravation in service on the whole evidentiary record.

(1) If sickle cell trait is identified during service, or when the symptoms of pre-service sickle cell disease are acute or transient without permanent residuals, service connection by aggravation is generally not warranted.

(2) If it is shown the disease first became symptomatic during service, or there were repeated crises, organic residuals, or chronic disablement in service, definitely consider a finding of aggravation. Carefully weigh the facts to determine if there was an increase in disability in service upon which to predicate a finding of aggravation. Symptomatic manifestations during or proximately following combat, or POW experience, will almost always establish aggravation.

SUBCHAPTER IX. THE SKIN

50.32 SECOND DEGREE BURNS

Diagnostic code 7802 limits the rating to 10 percent for second degree burns affecting an area or areas approximately 1 square foot (6.452 square centimeters). If there is more than one area, and each area is approximately 1 square foot or more, assign a 10 percent rating for each scar.

SUBCHAPTER X. ENDOCRINE SYSTEM

50.33 ENDOCRINE SYSTEM

a. **Diabetes Mellitus.** Diagnosis of diabetes mellitus cannot be made from glycosuria alone, inasmuch as this may result from low renal threshold for sugar, or from excessive ingestion of sugar. The presence of sugar in the urine is characteristic, but not essential to the diagnosis or diabetes mellitus. Persistent hyperglycemia (170 mg per 100 cc blood after 12-hour fasting) and glycosuria may be secondary to hyperthyroidism, dyspituitarism, pregnancy, apoplexy, cerebral trauma or severe infections. Polyuria, polydipsia, polyphagia, weakness and loss of weight are cardinal symptoms of the disease when it is not under control.

b. **Rating Diabetes Mellitus.** If the blood sugar can be kept within normal limits and the urine sugar free, with or without moderate doses of insulin on a diet sufficient to maintain the weight and strength of the claimant, the disease is not seriously disabling. However, as the disease progresses it becomes more difficult to control. There is progressive limitation of activity which limits employability, and as complications develop, the degree of disability increases.

(1) **Complications of Diabetes Mellitus.** Consider arteriosclerosis, including peripheral or cardiac complications, and cataracts as secondary to the disease, unless shown to be of other origin.

(2) **Rating Complications of Diabetes Mellitus.** If a ratable disease entity has been found to be secondary to diabetes mellitus, whether the secondary condition is a complication as to warrant the 100 percent evaluation under diagnostic code 7913 depends upon the severity of the underlying diabetes mellitus. The following examples are provided.

EXAMPLE 1: If ketoacidosis or hypoglycemic reactions are not present, do not evaluate diabetes mellitus well-controlled by insulin and restricted diet with careful regulation of activities as severe (60 percent) simply because mild (noncompensable) complications are present. In this example, evaluate the diabetes mellitus at 40 percent, and include the mild complications under diagnostic code 7913.

EXAMPLE 2: Diabetes mellitus is controlled by insulin, restricted diet and careful regulation of activities. In addition, there is diabetic peripheral neuropathy ratable at 10 percent. In this example, rate the diabetes mellitus at 40 percent, and separately evaluate the compensable complication in accordance with *NOTE* under diagnostic code 7913.

EXAMPLE 3: If a disease entity has been found to be secondary to diabetes mellitus, and has been considered a severe complication (in lieu of progressive loss of weight and strength) to warrant the 100 percent evaluation, it is pyramiding to assign a separate evaluation for the same entity. As an example, if the basic diabetes mellitus is uncontrolled with repeated episodes of ketoacidosis (restricted diet and regulation of activities), but with no progressive loss of weight and strength, a below the knee amputation may be considered as a severe complication to warrant the 100 percent evaluation. However, as it was used to reach the 100 percent evaluation, it would be pyramiding to assign a separate 40 percent evaluation. Accordingly, the veteran would be evaluated at 100 percent plus SMC (k) for the anatomical loss of a foot. If the severe complications are not considered in reaching the 100 percent evaluation, they may be separately evaluated.

NOTE: Mild complications are defined as noncompensable and are always to be evaluated as part of the diabetic process under diagnostic code 7913. Compensable complications are to be separately evaluated, unless they are considered a severe complication in the assignment of the 100 percent evaluation.

50.34 THYROID CONDITIONS

a. **Hyperthyroidism.** Hyperthyroidism with diffuse goiter is a condition due to an excessive functional activity of the thyroid gland. If disease of the heart predominates, it should be rated as hyperthyroid heart disease (diagnostic code 7008). There is a propensity for psychiatric manifestations to occur where hyperthyroidism is present, and if properly determined to be a part of hyperthyroidism, the psychiatric condition should be considered in the overall evaluation under diagnostic code 7900.

b. **Nontoxic Adenoma.** A nontoxic adenoma (tumor) of the thyroid may be rated 0 percent, 20 percent, or higher, if other organs are affected. As the thyroid influences the general rate of metabolism, growth and development, disease of the thyroid may affect other vital organs and interfere with their functions, resulting in higher evaluations which should be evaluated under the diagnostic code for the particular organ involved.

SUBCHAPTER XI. NEUROLOGICAL CONDITIONS AND CONVULSIVE DISORDERS

50.35 SERVICE CONNECTION OF NEUROLOGICAL DISORDERS

The field of nervous and mental diseases includes as varied a group, with regard to etiology and manifestations, as well as severity, as any field in medicine. The diseases must, therefore, not be viewed, as regards to service relationships or disabling effects, as a class, but individually bearing in mind the etiology and clinical course of the separate diseases. Consider conditions of infectious origin with regard to the circumstances of infection, the incubation period, etc. Diagnoses reflecting traumatic origin require trauma adequate to produce the result. There is a large group of diseases, such as multiple sclerosis, progressive muscular atrophy, and myasthenia gravis, in which increase, over a period of a few months, generally refects mere natural progress.

50.36 MULTIPLE SCLEROSIS

Multiple Sclerosis is a slowly progressive central nervous system disease characterized by disseminated patches of demyelination in the brain and spinal cord, resulting in multiple and varied neurologic symptoms and signs, usually with remissions and exacerbations.

a. **Residual Disability 30 Percent or More.** If the disability attributable to multiple sclerosis equals or exceeds 30 percent, evaluate each affected system or body part separately. Show the diagnostic code for multiple sclerosis only once by listing it with the most severely affected function. Thereafter, code involvement of other manifestations under the diagnostic code assignable for the condition on which the evaluation is based. Diagnoses for the other body systems involved shall show the condition as secondary to multiple sclerosis.

EXAMPLE 1:

	1. SC (KC Pres)
8018-7512	Multiple Sclerosis with bladder dysfunction 40% from 12-1-81
8521	Weakness of right lower extremity secondary to Multiple Sclerosis 10% from 12-10-81
8521	Weakness of left lower extremity secondary to Multiple Sclerosis 10% from 12-10-81
7523	Impotency without penile deformity, secondary to Multiple Sclerosis 0% from 12-10-81
	43. Bilateral Factor of 1.9% added for diagnostic codes 8521 and 8521
K-1	Entitled special monthly compensation under 38 U.S.C. 314, (k) and 38 CFR 3.350(a) on account of loss of use of a creative organ from 12-10-81.
COMB:	50% from 12-10-81

NOTE: SMC coding is 01-00-00-1-01

EXAMPLE 2:

	1. SC (VE Inc)
8018-5110	Multiple Sclerosis, loss of use of both lower extremities 100% from 11-30-75
7512	Cystitis, secondary to Multiple Sclerosis 40% from 11-30-75
L-1	Entitled special monthly compensation under U.S.C. 314, subsection (l) and 38 CFR 3.350(b) on account of loss of use of both feet from 11-30-75.
COMB:	100% from 11-30-75

NOTE: SMC coding is 03-24-00-0-03

b. **Disposition of Multiple Sclerosis Cases Previously Rated as a Single Disability.** The procedure set forth above is a change from the previous requirement to rate multiple sclerosis as a "single disability" when the combined degree was less than 100 percent. There will not be a review to identify these cases for rerating under the new procedure. Instead, cases will be rerated under the new procedure as they are encountered.

50.37 PROGRESSIVE MUSCULAR ATROPHY

Progressive muscular atrophy (diagnostic code 8023) refers to progressive spinal muscular atrophy, which is a disease of the spinal cord. It is a chronic disease and is subject to presumptive service connection (38 CFR 3.309). It is not the same as progressive muscular dystrophy, which is not a neurological disease, and is not subject to presumptive service connection.

50.38 TRAUMATIC ENCEPHALOPATHY

Although the diagnosis of traumatic encephalopathy has been eliminated from the rating schedule, accept this diagnosis as "brain disease due to trauma" for purposes of assigning the 10 percent rating for subjective complaints under diagnostic code 8045-9304 (brain disease due to trauma).

50.39 IDENTIFICATION OF EPILEPSY

To warrant service connection for epilepsy, seizures must be witnessed "or verified" at some time by a physician. This does not mean a physician *must* have witnessed an actual seizure before a diagnosis of epilepsy can be accepted for rating purposes. Verification by a physician, based upon factors other than observing an actual seizure, is sufficient.

SUBCHAPTER XII. MENTAL DISORDERS

50.40 DISABILITY OR DEATH FROM USE OF ALCOHOL

a. **Alcoholism Per Se.** Alcoholism, in and of itself, is a misconduct condition.

(1) As a primary condition, it may not be accepted as a basis for granting or increasing monetary benefits under the laws administered by the VA. However, if alcoholism is secondary to and a manifestation of a psychotic, psychoneurotic or psychophysiologic disorder, consider the alcoholism part and parcel of the disability and rate as one disease entity; e.g., schizophrenia with alcoholism.

(2) In compensation claims, personality disorders characterized by developmental defects or pathological trends in the personality structure will not be considered underlying psychiatric diseases for this purpose. Alcoholism due to such diagnoses will be a bar to granting or increasing benefits based on such alcoholism. However, alcoholism can be the basis for a rating of incompetency.

b. **Secondary Effects.** Organic diseases which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, are not considered of willful misconduct origin (Adm. Dec. 988). Secondary results, such as cirrhosis of the liver, gastric ulcer, peripheral neuropathy, or chronic brain syndrome sometimes appear because of indulgence in alcohol. Thus, such conditions may be compensable or pensionable whether attributable to the chronic use of alcohol or other causes.

c. **Acute Intoxication.** A disability or death sustained as a direct result of drunkeness is generally classified as willful misconduct. When an individual willingly achieves a drunken state and, while in this condition, undertakes tasks for which his/her condition renders him/her physically and mentally unqualified, he/she acts with wanton and reckless disregard of the probable consequences of drinking, consider the resulting injury or death willful misconduct.

d. **Application of 38 CFR 3.114(a).** Before August 13, 1964, secondary effects of alcohol were also considered to be willful misconduct. Benefits under this revision are not to be awarded prior to August 13, 1964. Adjudicate claims under this change in policy as they are encountered in the course of otherwise required adjudication.

50.41 DISABILITY OR DEATH FROM USE OF DRUGS

a. **Drug Abuse Per Se—Willful Misconduct.** When drugs are used to enjoy or experience their effects and the effects result proximately and immediately in disability or death, consider such disability or death the result of the person's willful misconduct. The progressive and frequent use of drugs, other than for recognized therapeutic purposes, which results in addiction, is considered willful misconduct.

b. **Secondary Effects of Drug Usage.** Do not consider organic diseases and disabilities shown by substantiating evidence as a secondary result of the chronic use of drugs and infections coinciding with the injection of drugs to be of willful misconduct origin.

c. **Drug Usage for Therapeutic Purposes Secondary to Service-Connected Disability.** When the use of drugs or drug addiction is shown by substantiating evidence as arising out of use for recognized therapeutic purposes or as secondary to or resulting from a service-connected disability, do not consider such drug use or addiction to be misconduct origin and a bar to the granting or increasing of monetary benefits.

50.42 ADDITIONAL AUTONOMIC AND VISCERAL MANIFESTATIONS

When, with a service-connected psychoneurotic reaction, or psychogenic reaction under other nomenclature, including psychophysiologic reaction, additional autonomic or visceral, or other psychophysiologic manifestations are added to the diagnosis, or appear in the findings, they will not be routinely considered as part of the original service-connected entity. Their inclusion or noninclusion depends on their continuity and relationship with the original service-connected entity and severity of the latter over the period since discharge. Manifestations not considered service connected will be denied under the appropriate denial code.

50.43 CHANGES IN PSYCHIATRIC NOMENCLATURE

There have been changes in psychiatric nomenclature precipitated by advances in the field of psychiatry. As rating specialists will encounter diagnoses utilizing nomenclature no longer in use, a listing of prior psychiatric nomenclature is found in addendum A to this chapter.

50.44 PSYCHIATRIC CONDITIONS

Do not make drastic reductions in evaluations in ratings for psychiatric conditions if a reduction to an intermediate rate is more in agreement with the degree of disability. (See also 38 CFR 3.344.) The general policy to be observed is a gradual reduction in evaluation to afford the veteran all possible opportunities of adjustment.

50.45 PTSD (POST-TRAUMATIC STRESS DISORDER)

[The issue of service connection is the sole responsibility of the rating board at the local level. In making that decision, it is important that the examining psychiatrist present a clear diagnosis showing a detailed history of the stressful events which are thought to have caused the condition and a full description of past and present symptoms. Because of the complexity of PTSD, the application of careful clinical judgment is necessary to identify and describe the relationship between past events and current symptoms. Service connection for PTSD will not be established on the basis of a diagnosis of PTSD unsupported by the above history and description or where the examination and supporting material fail to indicate a link between current symptoms and an inservice stressful event(s).

a. **Request for Examination.** When requesting an examination, state in the remarks section of VA Form 21-2507, Request for Physical Examination, "Claims folder to be made available to examiner upon request."

b. **Essentials of Diagnosis.** To justify the clinical diagnosis and to assure uniformity of its use, the following findings should appear in the clinical examination:

(1) The person has experienced an event that is outside the range of usual human experience and that would be markedly distressing to almost anyone; e.g., serious threat to one's life or physical integrity; serious threat or harm to one's children, spouse, or other close relatives and friends; sudden destruction of one's home or community; or seeing another person seriously injured or killed as the result of an accident or physical violence.

(2) The traumatic event is persistently reexperienced in at least one of the following ways:

(a) Recurrent and intrusive distressing recollections of the event.

(b) Recurrent distressing dreams of the event.

(c) Sudden acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, hallucinations, and dissociative [flashback] episodes, even those that occur upon awakening or when intoxicated).

(d) Intense psychological distress at exposure to events that symbolize or resemble an aspect of the traumatic event, including anniversaries of the trauma.

(3) Persistent avoidance of stimuli associated with the trauma or numbing of general responsiveness (not present before the trauma), as indicated by at least three of the following:

(a) Efforts to avoid thoughts or feelings associated with the trauma.

(b) Efforts to avoid activities or situations that arouse recollections of the trauma.

(c) Inability to recall an important aspect of the trauma (psychogenic amnesia).

(d) Markedly diminished interest in significant activities.

(e) Feeling of detachment or estrangement from others.

(f) Restricted range of effect; e.g., unable to have loving feelings.

(g) Sense of foreshortened future; e.g., does not expect to have a career, marriage, or children, or a long life.

(4) Persistent symptoms of increased arousal (not present before the trauma), as indicated by at least two of the following:

(a) Difficulty falling or staying asleep.

(b) Irritability or outbursts of anger.

(c) Difficulty concentrating.

(d) Hypervigilance.

(e) Exaggerated startle response.

(f) Physiologic reactivity upon exposure to events that symbolize or resemble an aspect of the traumatic event (e.g., a woman who was raped in an elevator breaks out in a sweat when entering any elevator).

(5) Duration of the disturbance (symptoms in 2, 3 and 4) of at least 1 month. If the onset of symptoms was at least 6 months after the trauma, the delayed trauma must be specified.

(6) The examining psychiatrist should comment on the presence or absence of other traumatic events and their relevance to the current symptoms.

(7) Relevant specific information concerning what happened must be described along with as much detailed information as the veteran can provide to the examiner as to location in time (year, month, day), geographical location (corps, province, town or other landmark feature such as a river or mountain), and the names of others who may have been involved in the incident.

c. **Incomplete Examinations and/or Reconciliation of Diagnosis.** If an examination is received with the diagnosis of PTSD which does not contain the above essentials of diagnosis, return the examination as incomplete for rating purposes setting forth the reasons why the examination is incomplete and request reexamination.

(1) Examples of a unacceptable diagnosis include insufficient description of symptomology to support the diagnosis, failing to indentify or to adequately describe the stressor, or failure to consider prior reports demonstrating a mental disorder which could not support a diagnosis of PTSD.

(2) If a diagnosis of PTSD is furnished, but there is evidence of record, such as service medical records, medical reports or examinations, which provides conflicting diagnosis, return the examination with the claims folder for reconciliation of diagnosis.

(3) Exercise caution to assure that situational disturbances containing adjustment reaction of adult life which subside when the situational disturbance no longer exists, or is withdrawn, and the reactions of those without neurosis who have "dropped out' and have become alienated are not built into a diagnosis of PTSD.

(4) Service connection for PTSD will not be established on the basis of a diagnosis of PTSD unsupported by the above history and description or where the examination and supporting material fail to indicate a link between current symptoms and an inservice stressful event(s).

d. **Reasonably Supportive Evidence of Stressors in Service.** Any evidence available from the service department indicating that the veteran served in the area in which the stressful event is alleged to have occurred and any evidence supporting the description of the event are to be made part of the record. If the claimed stressor is related to combat, receipt of the Purple Heart, Combat Infantryman Badge, Bronze Star, and other similar citations are, in the absence of information to the contrary, considered supportive evidence of participation in a stressful episode. Other supportive evidence includes, but is not limited to, plane crash, ship sinking, explosion, rape or assault, duty on a burn ward or in graves registration unit. POW status is conclusive evidence of an inservice stressor.

e. **Development for PTSD.** A history of a stressor as related by the veteran is, in itself, insufficient. Service records must support the assertion that the veteran was subjected to a stressor of sufficient gravity to evoke symptoms in almost anyone. The existence of a recognizable stressor or accumulation of stressors must be supported. It is important the stressor be described as to its nature, severity and date of occurrence.

(1) If the veteran indicates pertinent treatment in a VA facility or elsewhere, request hospital report(s) and clinical records. If Vet Center participation is indicated, also request the Vet Center records.

(2) In cases where records available to the rating board do not provide objective or supportive evidence of the alleged inservice traumatic stressor, it is necessary to develop for this evidence. While inservice traumatic stressors do not have to be documented to an absolute certainty, the supportive evidence of record must be sufficient to permit a rating board to reasonably conclude that the stressful event occurred as alleged. If necessary, develop for this evidence as follows:

(a) Request the veteran to furnish specific details of the inservice stressful incident(s) such as date(s), place(s), unit of assignment at the time of the event(s), description of the event(s), medal(s) or citation(s) received as a result of the event(s), and if appropriate, name(s) and other identifying information concerning any other individuals involved in the event(s). Also inform the veteran that the information is necessary to obtain supportive evidence of the stressful event(s) and that failure to respond may make it difficult or impossible to obtain this evidence.

(b) At the same time, request the service department to furnish copies of appropriate pages from the veteran's personnel file showing unit assignments, dates of assignments, participation in combat operations, wounds received in action, awards and decorations, and official travel outside of the continental United States.

(c) When the VA receives the requested information from both the veteran and the service department, send a letter to the U.S. Army and Joint Services Environmental Support Group, DAAG-ESG, 1730 K Street, NW, Room 210, Washington, DC 20006, requesting supporting evidence. Enclose copies of information received from the veteran and the service department with these requests. A VA examination which adequately describes the alleged stressors may be paraphrased as to the alleged stressors and enclosed with the letter to the Environmental Support Group if the veteran does not respond to the request for details of the stressors. Also furnish the following information to the Environmental Support Group:

1. Full name;

2. Claim number;

3. Social Security number;

4. Military service number;

5. Regional office and address;

6. Units of assignment, campany, batallion, regiment, and division;

7. Type, place and date of the specific stress incident(s) claimed;

8. If possible, names of other persons involved or aware of incident (or names of close friends killed in action);

9. Copy of VA Form 119, Report of Contact, or copy of veteran's statement involving incident: and

10. Copy of DD Form 20 from St. Louis NPRC, if available.

f. **Stressors.** In making a decision, the rating board shall exercise fair, impartial, and reasonable judgment in determining whether a specific case of PTSD is service connected. Some relevant considerations are:

(1) PTSD does not need to have its onset during combat. For example, vehicular or airplane crashes, large fires, flood, earthquakes, and certain other disasters would evoke significant distress in most involved persons. The trauma may be experienced alone (rape or assault) or in the company of groups of people (military combat).

(2) A stressor is not to be limited to just one single episode. A group of experiences also may affect an individual, leading to a diagnosis of PTSD. In some circumstances, for example, assignment to a grave registration unit, burn care unit, or liberation of internment camps could have a cumulative effect of powerful, distressing experiences essential to a diagnosis of PTSD.

(3) PTSD can be caused by events which occur before, during or after service. The relationship between stressors during military service and current problems/symptoms will govern the question of service connection. Symptoms must have a clear relationship to the mililtary stressor as described in the medical reports.

(4) PTSD can occur hours, months, or years after a military stressor. Despite this long latent period, service-connected PTSD may be recognizable by a relevant association between the stressor and the current presentation of symptoms. This association between stressor and symptoms must be specifically addressed in the VA examination report and to a practical extent supported by documentation as expressed in subparagraphs b and d, and when applicable, subparagraph e(2).

g. **Continuity of Treatment.** In PTSD cases, continuity is not a requirement. PTSD may be established as service connected, even if a considerable period of time has lapsed between the stressor and its chronic manifestations.

h. **Complex Cases.** Although it is expected that most PTSD claims will be resolved at the local level, Central Office opinion or guidance may be requested on complex cases.]

SUBCHAPTER XIII. DENTAL AND ORAL CONDITIONS

50.46 EVALUATION OF DENTAL AND ORAL CONDITIONS

For the evaluation of dental and oral conditions, see chapter 51.

SUBCHAPTER XIV. UNEMPLOYABILITY DETERMINATIONS IN PENSION CASES

50.47 UNEMPLOYABILITY

Unemployability is established if the evidence shows inability to secure and retain substantially gainful employment by reason of disability or disability and age, as well as related factors. Substantially gainful employment is employment which is ordinarily followed by the nondisabled to earn their livelihood with earnings common to the particular occupation in the community where the veteran resides.

a. **Requirements.** The following will be considered as indicative of unemployability due to disability, subject to the showing required in this subchapter.

(1) The disability percentage requirements set forth in paragraph 17 of the rating schedule are met, and

(2) The veteran is either unemployed or marginally employed. (It must be kept in mind that "unemployed" is not synonymous with and does not necessarily mean "unemployable." However, the greater the disability, the less need of other evidence of unemployability.)

(3) With respect to extra-schedular evaluations, see paragraph 46.08f.

b. **Ability To Secure Employment.** "To secure employment" involves the consideration of the attempts made by the veteran to obtain work of the type the veteran is capable of performing in the area of residence. The kind and sufficiency of evidence needed to establish reasonable efforts to secure employment will vary with the facts of the individual case. In many instances, the veteran's unsupported statement will suffice if it is consistent with the other facts of the case including such considerations as a good work record. In others, evidence will be required from past and prospective employers. In this respect, bear in mind some employers may be reluctant to say they have refused to hire an individual because of age, or age and disability combined.

c. **Ability To Retain Employment.** The "ability to retain employment" once it is secured is a necessary element of employability and envisages sustained performance as contrasted with temporary or sporadic work.

d. **Sole Employment of Household Duties.** A veteran whose sole employment consists of performance of household duties may qualify as unemployable if the veteran is no longer able to perform the principal household duties without substantial help.

e. **Nonprogression of Disability.** The fact that the veteran's records show that, prior to discontinuance of employment, there was full-time work with about the same degree of disability as presently exists is not in itself a proper basis for holding the veteran employable. Moderate progression of disabling conditions considered with advancing age may compel termination of employment by a person who had been working despite disability.

f. **Mandatory Requirement.** Do not use the forced discontinuance of work upon reaching mandatory retirement age (or optional retirement in many cases) as the sole reason for regarding the veteran to be employable. Rather, the determinative factors are whether the veteran's disability and age prevent the veteran from obtaining another position. Steady employment over a long period is ordinarily an indication of the veteran's desire to work.

g. **Character and Behavior Disorders.** A permanent total disability pension rating may be authorized for a congenital, developmental, hereditary or familial condition. If a veteran has one of these conditions that is less than totally disabling, the veteran may still be unemployable on account of such a disability and a finding of unemployability would be in order.

h. **Unemployment Resulting From Offenses Against Society.** If a personality disorder is manifested by behavior offensive to society and the offense against society results in imprisonment or custodial care, it is this offense, rather than the individual's disability, which removes the individual from the labor market. There is no basis for a finding of unemployability. This would apply, for example, if a veteran with a disability of sociopathic personality disturbance with sexual deviation is committed for acts of a criminal sexual psychopath. The reason for unemployment is the removal of the individual from a work-possible environment for an offense against society, rather than because of disability.

i. **Unemployability Decisions.** Both the degree of disability and the veteran's age are determinative factors as to unemployability. Consider age, education and occupational background, and other related factors in pension claims. If basic eligibility is present, do not hesitate to apply 38 CFR 3.321(b)(2) if disability percentage standards are not met.

(1) While the "end of the year" rule for income increases is no longer applied under Improved Pension, continue to exercise restraint in discontinuing eligibility to pension benefits by reason of regained employability to newly employed veterans already on the rolls. Income limitations are adequate to control both Improved Pension and Section 306 claims.

(2) If benefits have been discontinued for an extended period based on excessive income from earnings, a redetermination of unemployability is required on a factual basis.

[j. **Effective Dates for Pension Awards.** For claims received after September 30, 1984, the effective date of an original or reopened award of disability pension is the date we received the claim. The award may be retroactive for up to a period of 1 year before the date of claim (but not earlier than the date of permanent and total disability) if the following conditions are met:

(1) The veteran files a claim for a retroactive award within 1 year from the date the veteran became permanently and totally disabled;

(2) The veteran was prevented by a disability, not of misconduct origin and not necessarily the disability upon which the permanent and total disability status is based, from applying for pension; and

(3) The disability prevented the veteran from filing the pension claim from the date of permanent and total disability for a period of at least 30 consecutive days.

k. **Criteria for Grant of Retroactive Award of Disability Pension.** Generally, the VA will not invite a claim to establish entitlement to a retroactive payment of disability pension. The instructions for VA Form 21-526, Veteran's Application for Compensation or Pension, advise the veteran that a claim for disability pension is considered a claim for retroactive payment only if so indicated on the application. However, if the veteran has not requested consideration for retroactive payment, and the rating board determines that a qualifying disability may exist, the rating board shall request authorization to advise the claimant that retroactive benefits may be payable. Do not establish a pending control in this event.

(1) **Qualifying Disability for Retroactive Pension Award.** The claimed disability must be so incapacitating that it is reasonable to conclude that it did in fact prevent the veteran from filing an application for pension. A disability will meet this requirement when it is so severe as to normally necessitate hospitalization and require intensive treatment. Examples of this type of disability would be a severe heart attack, cardiovascular accident or a critical injury of an incapacitating nature requiring intensive care and/or treatment. The disability must prevent the veteran from filing from the date the veteran first became permanently and totally disabled and must continue for a period of at least 30 consecutive days. However, the qualifying disability does not have to continue for the entire retroactive period.

(2) **Requirement for Rating Decision.** In disability pension claims, the issue of a retroactive effective date will be disposed of by a disability rating.

(a) If claimed with the application for pension and the evidence is sufficient to evaluate for qualifying disability, dispose of the issue with the disability rating granting or denying permanent and total disability;

(b) If claimed after commencement of pension payments, prepare a separate disability rating disposing of the issue;

(c) If claimed when the permanent and total evaluation is based upon attainment of age 65, prepare a rating which must include a determination of permanent and total disability on a factual basis in addition to the determination of a qualifying disability from an earlier effective date; or

(d) If claimed and the evidence is insufficient to evaluate for qualifying disability, defer the issue and maintain the pending issue control. Do not delay granting pension benefits from the date of receipt of the claim when the veteran is permanently and totally disabled but the issue of retroactive payment cannot be immediately resolved.]

50.48 MARGINAL EMPLOYMENT

a. **Definition.** Marginal employment exists when, by reason of age and disability, the veteran works less than one-half the usual hours or receives less than one-half the prevailing community wage for the particular occupation. To qualify as marginal employment under paragraph 17(a) of the rating schedule, it is not necessary that the veteran be employed less than half the usual time and also be earning less of the usual remuneration. Either one in itself will suffice.

b. **Marginal Occupations.** In many areas there are jobs available where the pay is too low to attract the able bodied and which, therefore, must be filled by older and disabled persons. However, they do require the employees to be present for a full workweek, and the pay is the same for the particular occupation throughout the community. These jobs are generally sedentary. Many of the jobs are of the type that will qualify under 38 CFR 3.342(b)(4) which provides: "Employment as a member employee or similar employment obtained only in competition with disabled persons will not be considered as evidence of employability." The employment contemplated by this regulation is in jobs set up by local custom or practice as positions to be filled by the aged or the disabled.

c. **Factors for Consideration.** Factors pertinent to the issue of marginal employment include the following, but no single element should in itself be regarded as determinative:

(1) Prior work history and earnings when compared with the present may have a relationship to and be evidence of the extent of the veteran's disability. A marked reduction of earnings may be indicative of a comparable decrease in mental or physical capabilities.

(2) The established wage for a particular type of job in the community.

(3) Opportunity for employment in the community.

(4) The type of disability in relation to the work for which the veteran is qualified by experience, education and training.

50.49 FACTORS RELATING TO UNEMPLOYABILITY OR MARGINAL EMPLOYMENT OF FARMERS

a. **The Size of Farms and Income Derived.** In computing the net return from a farm operation when members of the veteran's family make substantial contribution of labor without pay, deduct the reasonable value of such labor from the

total income in order to arrive at a true figure of the net remuneration resulting from the veteran's own contribution of labor or supervision. This method of computation is for unemployability purposes only and is not to be used in determining annual income.

(1) Many farm operations are so small and the income so meager that, even though the disabled veteran is doing all of the work required, the veteran might be considered as marginally employed. Do not base a denial solely on the fact this type of farmer never operated a farm on a large scale.

(2) Consider if before the veteran became disabled there was supplementation of farm income by working as a hired laborer for others, and if because of physical impairment such source of income is no longer available.

b. **Type of Work Performed.** Consider light chores versus heavy farm labor and seasonal labor as compared to year-round work. Higher degrees of disability obviously limit the scope of farm work that may be performed.

c. **Past Work History.** Consider if the veteran was required by age or disability to make a change from some other type of full-time employment to a marginal farming operation.

d. **Prevailing Income and Hours of Work.** If necessary, compare income and hours of work with other farmers in the area engaged in comparable operations. Use the local county agricultural representative as a source of information on this question in doubtful cases.

e. **Supervision.** Consider this type of activity as evidence of employability only when the farm operation is large enough to warrant a full-time supervisor.

50.50 UNEMPLOYMENT DUE TO LOSS OF INDUSTRY IN THE COMMUNITY

The fact that an industry closes or is removed from the community where the veteran resides, thereby resulting in the loss of the veteran's job, is a factor for consideration and may have a bearing on whether the veteran's disability prevents further employment. It should not be used as the sole basis for a finding of either employability or unemployability. Inability to compete in the labor market because of age or disability is a valid basis for a finding of unemployability even though the veteran did not actually become unemployed because of a particular disability.

50.51 RATING PRACTICES AND PROCEDURES

a. **Adequate Development.** The difficulty in determining unemployability in many pension claims is due to the lack of factual evidence being of record. Do not develop claims unnecessarily, but where the facts are not adequate for an equitable decision, do not hesitate to initiate development.

b. **Concurrent Requests for Evidence.** If evidence of unemployability is required, request it concurrently with the request for examination. The "greater the disability the less evidence of unemployability" rule will be applied, so as to avoid unnecessary development. Exercise special care in rating claims in which the decision rests solely on a finding of employability. Ensure the facts on which the grant or denial is based are set out in detail and, when applicable, the discussion paragraph contains the rating board's reasoning.

c. **Determinations of Permanence of Total Disability.** The permanence of total disability shall be established as of the earliest date consistent with the evidence in the claim (38 CFR 3.342(b)(2)). The regulation also requires a finding of permanence after 6 months hospitalization without improvement in tuberculosis and other disabilities requiring hospitalization for indefinite periods. Consider the 6-month period a maximum, rather than a minimum, waiting period. An earlier date, consistent with the facts, is always preferable. The judgment of the rating specialist, in determining the reasonable probability of permanence of total disability, should be free of restricting artificial criteria. Consider each claim based on its own unique facts and circumstances.

d. **Anticipation of Residuals.** If a veteran suffers a heart attack, stroke or accident, etc., the anticipated permanent residuals may generally be evaluated from the degree of recovery shown within a comparatively short time after the occurrence, with due consideration being given to the veteran's age, educational level, occupational background and prior physical condition. Do not defer action until the residual disability can be established with absolute certainty. If permanent total disability is anticipated, but not definitely established, prepare a favorable rating decision and schedule a future review examination.

e. **Rating Day Hospitalization Cases.** The Day Hospital program is a posthospital care or outpatient program which provides veterans with a brief, but very intensive psychiatric regimen. Since there are prospects of recovery under intensive treatment, exercise care in establishing permanent and total disability for pension entitlement based solely on a period of day hospitalization.

SUBCHAPTER XV. UNEMPLOYABILITY DETERMINATIONS IN COMPENSATION CASES

50.52 INDIVIDUAL UNEMPLOYABILITY

a. **Requirements.** To establish entitlement to total compensation benefits because of individual unemployability, a veteran must claim to be unable to secure or retain employment by reason of service-connected disability. The veteran must complete VA Form 21-8940, [Veteran's] Application for Increased Compensation Based on Unemployability; meet the schedular requirements of 38 CFR 4.16 or have an extra-schedular evaluation approved by Central Office (212A); and be unemployable in fact by reason of service-connected disability. The rating board must consider both the veteran's current physical condition and employment status when rating claims for total compensation because of individual unemployability.

b. **General Information.** General information about eligibility for total benefits by reason of individual unemployability is provided by VA Form 21-8764, Disability Compensation Award Attachment. The attachment states that a veteran may claim this benefit by completion of VA Form 21-8940, if the veteran believes that the service-connected conditions produce unemployability.

c. **Claim Not To Be Inferred.** A claim for individual unemployability is not to be inferred. A veteran must specifically claim this benefit by completing VA Form 21-8940. It is the duty of the rating board to identify claims in which there is a strong likelihood the veteran may be entitled to this benefit. If the rating board identifies potential entitlement to a total disability evaluation based on individual unemployability, the board shall request VA Form 21-8940 be sent to the veteran. Authorization shall include the following statement in the letter transmitting the form:

> "You may be entitled to compensation at the 100 percent rate if you are unable to secure and follow a substantially gainful occupation because of your service-connected disabilities. If you believe that you qualify, please complete and return the enclosed VA Form 21-8940, Veteran's Application for Increased Compensation Based on Unemployability."

50.53 EVIDENCE REQUIREMENTS

Use the veteran's application on VA Form 21-8940 as the basis for development of evidence to support the claim for individual unemployability. When rating claims for total benefits because of individual unemployability, ensure all evidence is adequate to evaluate both the veteran's current degree of disability and employment status. Develop all required evidence concurrently.

a. **Medical.** Evidence sufficient to support a current evaluation of the extent of all of the veteran's disabilities must be of record. The evidence shall reflect the veteran's condition within the past 12 months and include but need not be limited to, results of VA examination, hospital reports, or outpatient treatment records. If the medical evidence of record is incomplete or inconsistent, schedule a general medical examination. Request special tests only when required for proper evaluation of the degree of severity of relevant disabilities.

b. **Employment.** VA Form 21-8940 requires the veteran to furnish an employment history for the 5-year period preceding the date the veteran claims to have become too disabled to work and for the entire time after that date. It is essential that VA Form 21-8940 contain the work history. In addition, request each employer during the 12-month period prior to the date the veteran last worked to complete and return a VA Form 21-4192, Request for Employment Information in Connection With Claim for Disability Benefits. Ensure each form is properly completed prior to referral for rating action. Forms indicating only that the veteran retired will routinely require additional development to obtain information as to whether the veteran's retirement was by reason of disability, and if so, the nature of the disability for which retired.

[c. **Self-Employment or Tightly Held Corporation.** Development to produce evidence necessary to establish the degree to which service-connected conditions have impaired the veteran's ability to engage in self-employment must generally be more extensive than development where the veteran worked for others. Request the veteran to furnish a statement as to types of work performed, amount of time lost in the previous 12 months due to service-connected disabilities, and number of hours worked per week.

(1) In the case of a self-employed person the issue for consideration is what is the relationship between the frequency and type of service performed by the veteran for the business and the veteran's net and gross earnings for the past 12 months. Low gross earnings tend to support a finding of marginable employment especially when considered with the amount of time lost from work due to service-connected disablement. Low net earnings, on the other hand, must be considered in connection with gross income. High gross income tends to indicate that the veteran is capable of engaging in a substantially gainful occupation. Inability to make a profit is not synonymous with the inability to engage in substantially gainful employment.

(2) A tightly or closely held corporation is usually a family corporation. If the veteran's name is the same as the corporation's, consider the possibility of a tightly held corporation. Since the veteran may control the amount of wages paid to himself/herself, do not make a finding of marginable employment solely on the basis of low wages. If reported wages appear low for the work performed, request a field examination per paragraph 7.07 to determine the veteran's relationship to the corporation and corporate earnings. The issue for consideration is whether the frequency and type of service performed by the veteran equates to substantially gainful employment. In this regard, evidence that the veteran received or was entitled to receive other remuneration from the corporation, such as stock dividends or loans, must be considered.]

d. **Rehabilitation.** The fact that the veteran either is participating in a program of rehabilitation or has completed such a program and is "rehabilitated" will not preclude a grant of total benefits because of individual unemployability. Deny claims or reduce awards only if the facts demonstrate that the veteran is not precluded from obtaining employment by reason of service-connected disability or has in fact obtained gainful employment.

50.54 AUTHORIZATION RESPONSIBILITIES (see chs. 1 and 22.)

Claims shall be controlled and developed by the Authorization activity. The Authorization activity is also responsible for implementing the decision to grant or deny benefits because of individual unemployability. Authorization shall request current evidence of treatment for the disability claimed as preventing employment, such as outpatient reports, VA hospital summaries, or records of treatment by a private hospital or doctor in conjunction with the development for individual unemployability. If the issue of service connection for the claimed disability has not been disposed of, take action to concurrently develop both issues (service connection and unemployability). After appropriate development has been taken, refer the claim to the rating board for review to determine if additional action is necessary, such as the scheduling of an examination.

50.55 RATING PRACTICES AND PROCEDURES

a. **Rating Board Responsibilities.** The rating board is responsible for the determination as to whether the veteran is

totally disabled by reason of service-connected disability. Evidence of the veteran's current physical condition and employment history is required before a decision as to entitlement may be made. Do not defer a decision as to the schedular degree of disability pending receipt of evidence sufficient to adjudicate the issue of individual unemployability.

b. **Rating Consideration.** Consider the following factors when rating claims for total benefits because of individual unemployability:

(1) Make a decision as to whether the veteran meets the requirements for a schedular 100 percent evaluation before considering the issue of individual unemployability.

(2) Ensure the disability requirements set out in 38 CFR 4.16 are met.

(3) Usually the evidence must establish that the service-connected conditions precluded employment continuously since incurrence or the date the service-connected condition reached a static level of disability.

(4) Establish individual employability on a factual basis. *Do not* presume individual unemployability.

(5) Apply the concept of average impairment in earning capacity to determinations of the percentage of disability, not to determinations as to entitlement to total compensation because of individual unemployability.

(6) "Individual unemployability" and the term "unemployable" are not synonymous for compensation purposes. A veteran may be unemployed or unemployable for a variety of reasons. A determination as to entitlement to total benefits because of individual unemployability is appropriate only when a veteran's unemployability is a result of service-connected disabilities.

(7) Do not consider the issue of individual unemployability if the veteran claims to be unable to obtain or retain employment because of a service-connected psychiatric disability. If the veteran's employment history indicates preclusion of gainful employment by reason of a service-connected nervous condition, assign the 100 percent evaluation.

(8) When considering the issue of entitlement to total compensation benefits because of individual unemployability, substantially gainful employment is defined as that which is ordinarily followed by the nondisabled to earn their livelihood with earnings common to the particular occupation in the community where the veteran resides.

(9) Determine marginal employment on an individual basis. Consider all factors such as number of hours worked, prior work history, availability of work, earnings, and time lost from work due to service-connected conditions. No one factor is necessarily determinative.

(10) Determine whether the severity of the service-connected conditions preclude the veteran from obtaining or retaining substantially gainful employment. Identify and isolate the effects of extraneous factors such as age, nonservice-connected conditions, intercurrent injuries, availability of work, or voluntary withdrawal from the labor market when determining whether a veteran is unemployable solely by reason of service-connected disability. Include sufficient data in the facts portion of the rating to justify the conclusion, and state in the discussion portion of the rating the reasoning behind the decision, either favorable or unfavorable.

c. **Preparation of Ratings.** Prepare a VA Form 21-6796, Rating Decision, to resolve the issue of individual unemployability. Follow the provisions of paragraph 49.14 to ensure that future date controls for physical examinations are maintained.

d. **Disposition of Inferred Issue.** Dispose of the issue of Dependents Educational Assistance (38 U.S.C. chapter 35) whenever individual unemployability is granted, and there are eligible or potentially eligible claimants for chapter 35 benefits.

50.56 CLAIMS REQUIRING CENTRAL OFFICE APPROVAL

a. **Central Office Approval Required.** Submit all proposed grants of total benefits because of individual unemployability to Central Office (212A) for review and approval if the proposal is not the result of a Board of Veterans Appeals decision and if the veteran falls into one of the following categories:

(1) The veteran has been removed from the labor market more than 12 months before the effective date of the grant.

(2) The veteran is age 60 or older before the effective date of the grant.

b. **Extra-Schedular.** Do not hestitate to submit any case to Central Office (212A) for extra-schedular considerations if the evidence of record supports a finding that the veteran is unemployable by reason of service-connected disability but does not meet the schedular requirements of 38 CFR 4.16 (par. 16 of the Schedule for Rating Disabilities).

c. **Preparation of Memorandum.** The memorandum prepared to transmit claims folders to Central Office for review must provide the following:

(1) Clear and succinct statements of fact, including medical and lay evidence of symptoms.

(2) Discussions of facts with relevant laws and regulations.

(3) The issues to be resolved as well as the recommended evaluations.

50.57 POW (PRISONER OF WAR)

For the jurisdictional purposes of 38 CFR 4.16, multiple injuries incurred in action are considered as one disability. POW status is a continuation of action against the enemy. Therefore, consider multiple disabilities incurred while a POW, and disabilities incurred in action prior to or subsequent to POW status as one disability.

SUBCHAPTER XVI. SMC (SPECIAL MONTHLY COMPENSATION)

50.58 AID AND ATTENDANCE

a. **General.** Greater disability is required for entitlement to the additional allowance for regular aid and attendance than for entitlement to the housebound rate or for a basic 100 percent schedular evaluation.

(1) The criteria for determining need for aid and attendance which appear in 38 CFR 3.352(a) provide the veteran must be so helpless as to require the aid of another person to perform the simple, personal functions required in everyday living.

(2) A single disability rated 100 percent under a schedular evaluation is generally a prerequisite to a determination of need for regular aid and attendance. (For definition of "single" disability, see 38 CFR 4.16.) Any lesser degree of disability is incompatible with the requirements of 38 CFR 3.352(a).

(3) If a current examination is of record and the disability evaluation is less than 100 percent, but it is considered that the disability is so severe as to demonstrate need for regular aid and attendance, submit the claim to Central Office (212A) for an advisory opinion (par. 19.03).

(4) If a single disability of 100 percent is assigned, consider entitlement to aid and attendance as an inferred issue (par. 46.08c). If entitlement to aid and attendance is specifically denied, also consider entitlement to the housebound benefit.

b. **Regular Aid and Attendance.** An SMC rating under 38 U.S.C. 314(l) on the basis of need for regular aid and attendance when the evidence shows entitlement to SMC under 38 U.S.C. 314(1) onthe basis of loss, or loss of use, of two extremities, constitutes clear and unmistakable error because the rate payable for aid and attendance is subject to reduction if the veteran is hospitalized.

(1) Make determinations of entitlement to SMC under 38 U.S.C. 314(1) on the basis of need of regular aid and attendance in light of the criteria contained in 38 CFR 3.352(a), and fully explain the reasoning in the discussion portion of the rating narrative. This is especially true in instances when, as provided in 38 CFR 3.350(e), the rate under (l) on account of need for aid and attendance is to be used as one of the "conditions entitling to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. 314(l) through (n)" for the purpose of establishing entitlement under 38 U.S.C. 314(o).

(2) If the rate under 38 U.S.C. 314(1) on account of need for aid and attendance is to be used to establish entitlement under 38 U.S.C. 314(o), base the determination of need for aid and attendance on separate and distinct disabilities.

EXAMPLE: If a veteran has suffered the loss of use of both feet and is also being considered for the maximum rate under 38 U.S.C. 314(o) on account of need for aid and attendance, such need must be due to service-connected disabilities completely independent of the loss of use of both feet. For the purpose of determining need for aid and attendance, it must be considered as though both feet were completely normal. The need for aid and attendance must be shown to be due to an other single service-connected disability rated 100 percent. A single disability is defined in 38 CFR 4.16.

50.59 HOUSEBOUND BENEFITS

The service–connected housebound benefit is payable to a veteran who (a) has a single, service–connected disability rated 100 percent under a schedular evaluation (without resort to individual unemployability) and has additional service–connected disability or combination of disabilities independently ratable at 60 percent or more, or (b) in addition to a single, service–connected disability evaluated at 100 percent, the veteran is permanently housebound from service–connected causes. (See 38 CFR 3.350(i).) (For a definition of "single disability," see 38 CFR 4.16.) Ratings of 100 percent under 38 CFR 4.16, 4.28, 4.29 and 4.30 of the rating schedule are extra–schedular evaluations and may not be used as a basis of entitlement. Entitlement may be based on the schedular evaluation of 100 percent for inactive tuberculosis or for psychosis following 6 months of hospitalization.

a. **Housebound in Fact**. There is no requirement that either the single, 100 percent disability or the independent 60 percent disability be permanent. [If] entitlement is based on the veteran being housebound in fact, the law requires the housebound state to be permanent. A veteran may be determined to be permanently housebound if, as a result of a single 100 percent disability, by itself or in combination with other service–connected disabilities, is confined for the foreseeable future to the place of residence and immediate premises or, if institutionalized, to the ward or clinical areas.

b. **Statutory Housebound.** The independent 60 percent or more disability, like the single 100 percent disability, must be a schedular evaluation under the rating schedule. Thus, an evaluation under 38 CFR 4.29 may not be used to supply any disability needed for a housebound rating. The disabilities of 60 percent or more must be separate and distinct from the single 100 percent disability and must involve separate anatomical segments or body systems. In a housebound determination, for example, an evaluation of 60 percent for pneumonectomy may not be rated independently of an evaluation of 100 percent for active pulmonary tuberculosis. Although the rating schedule provides that a separate evaluation will be made for each diagnosis relating to a single body system, when such diagnoses cover a single functional entity and are all parts of a common disability, they may not be considered as independently ratable. Within these limits, the fact that a 100 percent disability and an independent 60 percent disability results from a common etiological agent will not preclude entitlement.

c. **Protected Evaluations**. Consider any evaluation protected under 38 CFR 3.951 as its protected level. For the purpose of determining entitlement to housebound benefits only, use ratings under the 1925 schedule which are protected by 38 CFR 3.951 with ratings under the current rating schedule for separate and distinct disabilities.

d. **Pulmonary Tuberculosis and Rib Resection**. If entitlement to the housebound rate is based on disability independently ratable at 60 percent, such disability must be separate and distinct from the 100 percent disability and must involve different anatomical segments or body systems. In this connection, rib resection is not a disability of the respiratory system. Consequently, with a rating of 100 percent for pulmonary tuberculosis, award the housebound benefits when an evaluation for rib resection can be combined with any other nonpulmonary disability to provide an independently ratable 60 percent disability.

50.60 LUMPING OF DISABILITIES

a. **Housebound Considerations.** If a possibility of entitlement to SMC under 38 U.S.C. 314(s) exists, do not lump disabilities, that is, rate together as a single disability.

b. **Intermediate or Next Higher Rate Considerations.** The above principle is equally applicable if there is a possibility of entitlement to an intermediate or next higher rate of SMC under 38 CFR 3.350(f)(3) or (4).

(1) A rating assigning a single evaluation of 100 percent for a multisystemic condition for loss of use of two extremities may overlook involvement in other body systems which might meet requirements for an intermediate rate under 38 CFR 3.350(f)(3) or the next higher rate under 38 CFR 3.350(f)(4).

EXAMPLE: A veteran has loss of use of both lower extremities due to multiple sclerosis. Assign a 100 percent evaluation for loss of use of both lower extremities under hyphenated diagnostic code 8018–5110. Assign separate evaluations under the appropriate diagnostic codes for the involvement of any other body system so that possible entitlement to a higher level of SMC will not be missed. Assume the disabilities shown below are all related to multiple sclerosis.

1. SC (VE PRES)

8018–5110	Multiple Sclerosis, with loss of use of both lower extremities 100 percent from June 14, 1982
6516	Dysarthria, due to multiple sclerosis 30 percent from June 14, 1982
7332	Impairment of Anal Sphincter Control due to multiple sclerosis 10 percent from June 14, 1982
7512	Loss of bladder control, moderate, due to multiple sclerosis 10 percent from June 14, 1982
6016	Nystagmus due to multiple sclerosis 10 percent from June 14, 1982
L–1	Entitled to special monthly compensation under 38 U.S.C. 314, subsection (1) and 38 CFR 3.350(b) on account of loss of use of both feet from June 14, 1982.
P–1	Entitled special monthly compensation under 38 U.S.C. 314, subsection (p) and 38 CFR 3.350(f)(3) at the rate intermediate between subsection (1) and subsection (m) on account of loss of use of both feet with additional disabilities, dysarthria, loss of bladder control, impairment of anal sphincter control and nystagmus independently ratable at 50 percent or more from June 14, 1982. (SMC coding would be [18–18–24–00–0].)

(2) If there is loss of use of both lower extremities, together with loss of anal and bladder sphincter control, meeting the requirements of 38 CFR 3.350(e)(1) for entitlement under 38 U.S.C. 314(o), separate ratings for loss of anal and bladder sphincter control are not required. (SMC paragraph code 55.)

50.61 CLAIMS SUBJECT TO ADJUSTMENT UNDER 38 CFR 3.552

a. **General.** It is imperative that the rating decision be specific as to the basis of the veteran's entitlement in order to ensure the proper application of 38 CFR 3.552.

b. **Assignment of SMC Codes.** Exercise extreme care assigning the basic SMC code and SMC while hospitalized code. Assignment of an improper basic SMC code can result in either an award being erroneously reduced upon hospitalization, or being reduced to an incorrect rate. [ ]

EXAMPLE 1: The veteran has a 100 percent heart condition so severe as to require the aid and attendance of another person. The veteran also has bilateral below the knee amputations. The rating board [awarded] SMC under 38 U.S.C. 314(r)(1), but assigned a basic SMC code of 55 with a hospitalized SMC code of 37 (38 U.S.C. 314(o)).

Discussion: As entitlement under 38 U.S.C. 314(r)(1) is based upon need for aid and attendance (1), plus entitlement under (1) for another condition (bilateral amputations), the proper SMC code is 51. The proper hospitalized SMC code is 07(38 U.S.C. 314(m)).

EXAMPLE 2: The veteran has a 100 percent psychiatric condition (not requiring aid and attendance), and in addition has a 100 percent heart condition, which does require aid and attendance. The rating board [awarded] SMC under 38 U.S.C. 314 subsection (m) under 38 CFR 3.350(f)(4) but assigned a basic SMC code of 07 with a hospitalized SMC code of 03 (38 U.S.C. 314(1)).

Discussion: As entitlement under 38 U.S.C. 314(m) is based upon need for aid and attendance, plus an additional 100 percent disability, the proper basic SMC code is 19 (p=m), and the correct hospitalized SMC code is 48 (38 U.S.C. 314(s)).

50.62 APPLICATION OF 38 CFR 3.350(e)(1) AND 38 CFR 3.350(f)(2)

Additional SMC is payable to veterans with bilateral blindness entitled to SMC under 38 U.S.C. 314(1) through (n) who also have varying degrees of service–connected hearing loss or service–connected loss or loss of use of an extremity.

a. **Total SC Deafness, One Ear.** A veteran who has service-connected blindness of LPO or less bilateral, and also has total service-connected deafness ratable in one ear; i.e., service-connected deafness ratable as "F" unilateral, is entitled to SMC under "o" (38 CFR 3.350(e)(1)(iv)). Veterans who have service-connected blindness of at least 5/200 (1.5/60) or less bilateral, and also have total service-connected deafness in one ear are entitled to an additional half step of SMC (38 CFR 3.350(f)(2)(iv)).

EXAMPLE 1: The veteran has bilateral service-connected blindness of LPO, and also has a total service-connected hearing loss in the left ear.

Discussion: Since the veteran's visual loss is at least LPO bilateral, and there is total service-connected loss of hearing in the left ear, there is [] entitlement to SMC under "o" (38 CFR 3.350(e)(1)(iv)). This is also one of the conditions affording entitlement to SMC under (r)(1). The SMC dictator's code is OB-2 and SMC coding is [55-37-22-00-0].

EXAMPLE 2: The veteran has bilateral service-connected blindness of no light perception in the left eye and 5/200 (1.5/60) in the right eye and also has a total service-connected hearing loss in the left ear.

Discussion: The rate of SMC payable for the degree of bilateral blindness present in 38 U.S.C. 314(m). However, in accordance with 38 CFR 3.350(f)(2)(iv) an additional one-half step of SMC is payable (m1/2). The SMC dictator's code is PB-1, and the SMC coding is [20-20-22-00-0].

b. **Deafness Ratable as 10 or 20 Percent Disabling, One Ear SC.** A veteran who has service-connected bilateral blindness of LPO or less, and also has a bilateral hearing loss ratable either 10 or 20 percent disabling (at least one ear SC) is entitled to an additional one-half step of SMC (38 CFR 3.350(f)(2)(v)). If the degree of vision loss in either of the eyes is better than LPO, there is no entitlement under this provision.

EXAMPLE 1: The veteran has anatomical loss of the left eye and LPO in the right eye. In addition, the veteran has a bilateral hearing loss ratable as 20 percent disabling. The right ear is service connected.

Discussion: The basic rate of SMC payable for the degree of blindness present is "m1/2." However, because the degree of vision loss in each eye is LPO or worse, and given the degree of hearing loss, the veteran is entitled to an additional one-half step of SMC(n). The SMC dictator's code is PB-2, and the SMC coding is [21-21-11-11-0].

EXAMPLE 2: The veteran has anatomical loss of the left eye and 5/200 (1.5/60) in the right eye. The veteran also has a bilateral hearing loss ratable at 20 percent. The right ear is service connected.

Discussion: Since the right eye has vision better than LPO, do not apply 38 CFR 3.350(f)(2)(v). The veteran is entitled to SMC under "m." The SMC dictator's code is MB-2. The SMC codes are [19-19-11-11-0].

c. **Deafness ratable as 30 Percent Disabling, One Ear SC.** A veteran who has bilateral blindness of 5/200 (1.5/60) or less, and also has a bilateral hearing loss ratable at 30 percent (one ear SC), is entitled to an additional "full" step of SMC, not to exceed "o" (38 CFR 3.350(f)(2)(vi)).

EXAMPLE: The veteran has anatomical loss of the left eye and vision of 5/200 (1.5/60) in the right eye. In addition, the veteran has a bilateral hearing loss ratable at 30 percent. The right ear is service connected.

Discussion: The basic rate of SMC payable for the degree of blindness present is "m." Apply 38 CFR 3.350(f)(2)(vi) and add an additional "full" step of SMC (n). The SMC dictator's code is PB-3, and the SMC coding is [21-21-11-11-0].

d. **Deafness Ratable as 40 Percent Disabling, One Ear SC.** A veteran who has blindness ratable at LPO or worse in both eyes and, in addition, has a bilateral hearing loss ratable at 40 percent (one ear SC) is entitled to SMC under "o" (38 CFR 3.350(e)(1)(iv)). If bilateral blindness is present, but the vision in either eye is better than LPO, only an additional "full" step of SMC is payable, not to exceed "o" (38 CFR 3.350(f)(2)(vi)).

EXAMPLE 1: The veteran has no light perception in the right eye and LPO in the left eye in addition to a bilateral hearing loss ratable at 40 percent (right ear SC).

Discussion: The basic rate of SMC payable for the degree of bilateral blindness present is "m1/2". However, apply 38 CFR 3.350(e)(1)(iv) because of the coexisting hearing loss. The veteran is accordingly entitled to "o" and (r)(1). The SMC dictator's code is OB–2 and the SMC rating codes are [55–37–22–00–0].

EXAMPLE 2: The veteran has no light perception in the right eye, and 5/200 (1.5/60) in the left eye, In addition, there is bilateral hearing loss ratable at 40 percent (right ear SC).

Discussion: The basic rate of SMC payable for the degree of bilateral blindness present is "m." However, because of the degree of hearing loss present, apply 38 CFR 3.350(f)(2)(vi) and grant an additional "full" step of SMC (n). The SMC dictator's code is PB–3, and the SMC coding is [21–21–22–00–0].

e. **Deafness Ratable as 60 Percent Disabling, One Ear SC.** A veteran who has bilateral blindness ratable at 5/200 (1.5/60), or one eye at 5/200 (1.5/60) and the other eye LPO or worse, and in addition, has a bilateral hearing loss ratable at 60 percent (one ear SC) is entitled to SMC under "o" (38 CFR 3.350(e)(1)(iii)).

EXAMPLE: The veteran has LPO in the right eye, and 5/200 (1.5/60) in the left eye in addition to a bilateral hearing loss ratable at 60 percent (right ear is SC).

Discussion: Due to the coexisting blindness and hearing loss, the veteran is entitled to SMC under "o" and (r)(1). The SMC dictator's code is OB–1 and the SMC codes are [55–37–22–00–0].

f. **Loss or Loss of Use of an Extremity Ratable at 50 Percent or More.** A veteran who has bilateral blindness of 5/200 or less and, in addition, has the service–connected loss or loss of use of an extremity (upper or lower) which by itself or in combination with another compensable disability is ratable at 50 percent or more is entitled to an additional "full" step of SMC, not to exceed "o" (38 CFR 3.350(f)(2)(vii)(A)). This is in addition to the SMC payable under 38 CFR 3.350(a).

EXAMPLE 1: The veteran has service–connected bilateral blindness of 5/200 and loss of use of the right hand.

Discussion: The basic rate of SMC payable for the degree of blindness present is "1." The veteran is also entitled to an additional full step of SMC, plus SMC under 38 CFR 3.350(a) for the loss of use of the right hand. Accordingly, the level of SMC payable is "m+k." The SMC dictator's code is PB–4 and the SMC coding is [25–25–35–00–0].

EXAMPLE 2: The veteran has service–connected bilateral blindness of 5/200 and amputation of the left foot, below the knee, plus hypertension ratable at 10 percent.

Discussion: First derive the level of SMC payable for blindness (1). The veteran is then entitled to an additional full step of SMC (38 CFR 3.350(f)(2)(vii)(B)), plus SMC (k) for the anatomical loss of the foot. The level of SMC payable is "m+k." The SMC dictator's code is PB–5, and the SMC coding is [25–25–21–13–0].

g. **Loss or Loss of Use of a Lower Extremity, Ratable at Less Than 50 Percent.** A veteran who has service–connected bilateral blindness ratable at 5/200 (1.5/60) or less, and in addition, has the loss or loss of use of a foot ratable at less than 50 percent, and who has no other compensable service–connected disability is entitled to an additional one–half step of SMC (38 CFR 3.350(f)(2)(vii)(C)). The level of SMC payable is not to exceed "o."

EXAMPLE: The veteran has service–connected bilateral blindness of 5/200 (1.5/60) and has a below the knee amputation of the right foot ratable at 40 percent. The veteran has no other compensable disabilities.

Discussion: The basic rate of SMC payable based on the degree of blindness is "l." There is also entitlement to a "k" for the loss of the right foot. The level of SMC is therefore "l+k." Apply 38 CFR 3.350(f)(2)(vii)(C) and grant an additional one–half step of SMC (11/2+k). The SMC dictator's code is PB–6, and the SMC coding is [18–18–21–13–0].

50.63 APPLICATION OF 38 CFR 3.350(f)(3) AND (4).

The provisions of 38 CFR 3.350(f)(3) and (4), whichever is appropriate, may be applied only once in a rating decision and concurrent entitlement to increased SMC under both 38 CFR 3.350(f)(3) and (4) or any combination thereof is prohibited. The following are examples of the application of the principles contained in 38 CFR 3.350(f)(3) and (4):

EXAMPLE 1: The veteran has incurred service-connected disabilities rated as:

5016	Amputation, both hands at wrist 100 percent from December 1, 1983
6066	Enucleation, right eye, left 20/20 40 percent from December 1, 1983
7524	Removal of left testis 10 percent from December 1, 1983

Discussion: It is apparent the veteran qualifies for SMC at the rate under 38 U.S.C. 314(m) on account of the anatomical loss of both hands. He also qualifies for two rates under 38 U.S.C. 314(k) on account of the anatomical loss of one eye and loss of a creative organ. However, as provided in 38 CFR 3.350(f)(3), in addition to, and independent of, the condition establishing entitlement under 38 U.S.C. 314(m), there is permanent disability (right eye – 40 percent and left testis – 10 percent) independently ratable at 50 percent. Accordingly, the requirements of 38 CFR 3.350(f)(3) are met for the rate intermediate between (m) and (n), plus two rates under (k). Complete the SMC section of the rating decision as follows:

K–1 Entitled special monthly compensation under 38 U.S.C. 314, subsection (k) and 38 CFR 3.350(a) on account of anatomical loss of one eye from December 1, 1983.

K–1 Entitled special monthly compensation under 38 U.S.C. 314, subsection (k) and 38 CFR 3.350(a) on account of anatomical loss of a creative organ from December 1, 1983.

M–1 Entitled special monthly compensation under 38 U.S.C. 314, subsection (m) and 38 CFR 3.350(c) on account of anatomical loss of both hands from December 14, 1983.

P–1 Entitled special monthly compensation under 38 U.S.C. 314, subsection (p) and 38 CFR 3.350(f)(3) at the rate intermediate between subsection (m) and subsection (n) on account of anatomical loss of both hands with additional disabilities of enucleation, right eye and removal of left testis independently ratable at 50 percent or more from December 14, 1983. (SMC coding is [31–31–00–33–1].)

EXAMPLE 2: The veteran has incurred service-connected disabilities as follows:

5002–5110	Loss of use of both feet with severe involvement of both knees, due to rheumatoid arthritis 100 percent from December 1, 1981
5286	Favorable ankylosis of spine due to rheumatoid arthritis 60 percent from December 1, 1981
5201	Limitation of motion right arm (major), to 25 degrees from side due to rheumatoid arthritis 40 percent from December 1, 1981
5201	Limitation of motion, left arm, shoulder level due to rheumatoid arthritis 20 percent from December 1, 1981 37. Disability directly due to [and] proximately the result of SC disability coded 5002
7308	Postgastrectomy syndrome, severe 60 percent from December 1, 1983 37. Disability directly due to and proximately the result of SC disability coded 5002
6003–6066	Iritis with enucleation, left eye, right 20/20 40 percent from December 1, 1983. 43. Bilateral factor of 5.2% added for diagnostic codes 5201–5201

Discussion: The loss of use of both lower extremities, as rated above, meets the requirements for SMC under 38 U.S.C. 314(m). However, completely independent of the loss of use of both lower extremities, the remaining disabilities combine to 100 percent. As provided

in paragraph 16 of the rating schedule, the later disabilities result from a common etiology (rheumatoid arthritis) and, therefore, the requirement of 38 CFR 3.350(f)(4) for an "additional single permanent disability independently ratable at 100 percent" is met. There is no prohibition against using the 40 percent for enucleation of the left eye in combination with the other disabilities to produce entitlement to the next higher rate under 38 CFR 3.350(f)(4) and, at the same time, to produce entitlement to SMC under 38 U.S.C. 314(k). The SMC section of the rating decision should be completed as follows:

K–1 Entitled to special monthly compensation under 38 U.S.C. 314, subsection (k) and 38 CFR 3.350(a) on account of anatomical loss of one eye from December 1, 1983.

M–2 Entitled special monthly compensation under 38 U.S.C. 314, subsection (m)and 38 CFR 3.350(c) on account of loss of use of one leg at a level or withcomplications preventing natural knee action with prosthesis in place andthe loss of use of the other leg at a level with complications preventingnatural knee action with prosthesis in place from December 1, 1983.

P–2 Entitled to special monthly compensation under 38 U.S.C. 314, subsection (p) and 38 CFR 3.350(f)(4) equal to subsection (n) on account of entitlement to special monthly compensation under 38 U.S.C. 314 (m) with additional disability, favorable ankylosis of spine, LOM of right arm, LOM of left arm, postgastrectomy syndrome and iritis with enucleation of the left eye independently ratable at 100 percent from December 1, 1983. (SMC coding is [27–27–24–11–0].)

NOTE: Under the provisions of 38 CFR 3.350(f)(4), a veteran who is entitled to a statutory rate payable under 38 U.S.C. 314(l) through (n) may be paid the next higher statutory rate if the veteran has "an additional single disability independently ratable at 100 percent apart from any consideration of individual unemployability." For this purpose, a single disability shall be defined in accordance with paragraph 16 of the rating schedule.

50.64 APPLICATION OF 38 CFR 3.350(f)(5)

Under the provisions of 38 CFR 3.350(f)(5), a veteran who has suffered the loss or loss of use of three extremities is entitled to additional compensation. Determine the rate of compensation payable to a veteran with the requisite degree of disability by first ascertaining the rate payable without regard to this provision and then, pursuant to this provision, increase the rate to the next higher rate authorized under 38 U.S.C. 314(l) through (n), without loss of any entitlement under 38 U.S.C. 314(k). The total monthly amount payable shall not exceed the rate under 38 U.S.C. 314(o) exclusive of the additional amount for dependents. The term "next higher rate" is intended to include the intermediate rates authorized under 38 U.S.C. 314(p).

EXAMPLE: The veteran has incurred service–connected disabilities rated as:

5106	Amputation, both hands at wrist 100 percent from December 1, 1983
5165	Amputation, left foot, below knee 40 percent from December 1, 1983
7100	Hypertension 20 percent from December 1, 1983

Discussion: The veteran qualifies for SMC at the rate under 38 U.S.C. 314(m) on account of the anatomical loss of both hands. Entitlement is also demonstrated to SMC under 38 U.S.C. 314(k) for an amputation of the left foot. In addition, the veteran is entitled to an additional one–half step under 38 CFR 3.350(f) due to the separate disabilities ratable at 50 percent or more. Accordingly, the rate of SMC payable without regard to 38 CFR 3.350(f)(5) is (m1/2)+(k). Once this is ascertained, the next step is to elevate to the next higher rate authorized under 38 U.S.C. 314(l) through (n), without loss of entitlement under 38 U.S.C. 314(k). Accordingly, the rate of SMC payable in this case is (n)+(k). Complete the SMC section of the rating decision as follows:

K–1 Entitled to special monthly compensation under 38 U.S.C. 314, subsection (k) and 38 CFR 3.350(a) on account of anatomical loss of one foot from December 1, 1983.

M–1 Entitled to special monthly compensation under 38 U.S.C. 314, subsection (m) and 38 CFR 3.350(c) on account of anatomical loss of both hands from December 1, 1983.

P-1 Entitled to special monthly compensation under 38 U.S.C. 314, subsection (p) and 38 CFR 3.350(f)(3) at the rate intermediate between 38 U.S.C. 314(m) and (n) on account of anatomical loss of both hands with additional disabilities of amputation of left foot and hypertension independentlyratable at 50 percent or more from December 1, 1983.

P-3 Entitled to special monthly compensation under 38 U.S.C. 314, subsection (p) and 38 CFR 3.350(f)(5) at the next higher rate or intermediate rate of 38 U.S.C. 314(n) due to loss of three extremities from December 1, 1983. (SMC code is [27-27-00-32-0].)

50.65 INTERMEDIATE RATES DUE TO AMPUTATION OR LOSS OF USE OF EXTREMITIES

The criteria for intermediate rates due to the amputation or loss of use of two extremities are set forth in 38 CFR 3.350(f)(1). The term "natural elbow or knee action with prosthesis in place" means the retention of the ability to move the prosthesis with natural joint action, that is, without recourse to any mechanical device attached to the prosthesis. Retention of minimal motion that is of no functional value, is considered loss of natural knee or elbow action for the purposes of 38 U.S.C. 314(m) and (n) respectively. However, partial restriction in the normal range of knee or elbow action is not considered loss of natural knee or elbow action.

50.66 (Deleted.)

50.67 HIGHER LEVEL OF CARE AID AND ATTENDANCE ALLOWANCE

a. **General.** A veteran entitled to the regular aid and attendance allowance under 38 U.S.C. 314(r) is entitled to receive, in lieu of that allowance, a higher aid and attendance allowance if the veteran is found to be in need of and receiving a higher level of care. Award the higher allowance only when the need is clearly established and the amount of skilled service required by the veteran is substantial. This allowance is payable even if such skilled service is being furnished by [ ] VA or another entity at no expense to the veteran.

b. **Claims for Higher Level of Care Allowance.** A claim for this allowance must include a statement from a licensed health care professional who is providing or supervising the daily skilled health care on a continuing basis in the veteran's home. If the initial claim for this benefit does not include this statement, request the veteran to furnish a statement from the licensed health care professional who provides or supervises skilled health care services. This statement should indicate the nature, extent and frequency of the services provided as well as specifying the conditions which cause the need for this care. Additionally, if the services are actually provided by a nonprofessional, the statement should indicate the nature and extent of the supervision being provided.

(1) **Skilled Care Not Provided.** If the statement from the licensed health care professional does not demonstrate that qualifying services are being provided, dispose of the issue by appropriate rating action.

(2) **Skilled Care Provided.** If a statement from a licensed health care professional shows that qualifying skilled services are being provided on a continuing basis, request an immediate examination. Annotate VA Form 21-2507, Request for Physical Examination, in the remarks section requesting certification of the need for the level of care required for entitlement to the higher rate under 38 U.S.C. 314(r)(2) authorized by Public Law 95-479. A copy of the statement submitted by the licensed provider will be furnished with VA Form 21-2507.

(a) Base eligibility to the higher allowance on certification by a VA physician that the veteran meets the criteria outlined in 38 CFR 3.352(a).

(b) VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, will be completed in response to the VA Form 21-2507 request. The physician will certify whether ongoing daily need for skilled personal care is indicated, or whether daily skilled services are not indicated by completing item 32 of VA Form 21-2680.

(3) **Hospitalization Adjustment.** Aid and attendance benefits, including those payable under 38 U.S.C. 314(r)(2), are subject to reduction under 38 CFR 3.552(b)(2).

50.68 N1/2+K CLAIMS

a. **General.** Public Law 96-128 amended 38 U.S.C. 314(r) concerning the granting of aid and attendance in n1/2+ k claims. Previously, to obtain the (r)(1) and (r)(2) rates, a veteran had to be entitled to 38 U.S.C. 314(o). Under Public Law 96-128, the service-connected disabilities which established entitlement to the n1/2+k rate may be used to establish eligibility to the aid and attendance rate if

factual entitlement is shown. The basic criteria contained in 38 CFR 3.352(a) must be met for entitlement at the 38 U.S.C. 314(r)(1) level. For entitlement to the 38 U.S.C. 314(r)(2) level, criteria contained in 38 CFR 38 3.352(b) are to be applied.

b. **Rating Action.** Fully justify action granting or denying A&A in these claims by citation of relevant facts. If eligibility to the A&A rate is established under the provisions of Public Law 96–128, use SMC code 43, or 44 in higher level care claims. The rates payable in these claims will be the n1/2 + k rate plus the (r), (r)(1), or (r)(2) increment.

50.69 LOSS OR LOSS OF USE OF CREATIVE ORGAN

a. **General**. Special monthly compensation may be authorized for loss or loss of use of a creative organ without a specific claim. On an initial claim, consider entitlement to SMC as part of the claim for disability compensation. If a claim is before the rating board, consider eligibility for SMC for loss or loss of use of a creative organ. This includes claims under consideration because of a specific claim, or based on a report of VA examination or hospitalization which constitutes a claim for reopening or increase under 38 CFR 3.157. In any case in which the evidence indicates a reasonable probability of entitlement, undertake further development, if necessary, including service records and special examination.

b. **Service Connection**. There is no bar to compensation for service incurred anatomical loss [ ] of a creative organ when nonservice–connected loss of use of a creative organ existed prior to the anatomical loss.

c. **Background.** Entitlement to SMC under 38 U.S.C. 314(k) for loss or loss of use of a creative organ became effective August 1, 1952 (Public Law 82–427). The liberalization aspect of 38 CFR 3.114(a) was effective December 1, 1962. Accordingly, for those veterans who had eligibility for SMC on August 1, 1952, authorize SMC for loss of use of a creative organ effective 1 year before the date of receipt of a claim, or 1 year before the date of an administrative determination whichever is earlier, but not prior to December 1, 1962.

50.70 DEAFNESS

Grant entitlement to special monthly compensation for deafness of both ears having absence of air and bone conduction if [ ] the service–connected bilateral hearing loss warrants a 100 percent evaluation under the rating schedule for hearing impairment. A numeric designation of impairment of "XI" in both ears meets this requirement. A designation of less than "XI" in either ear will preclude entitlement. A veteran with a bilateral "XI" designation whose hearing impairment was service connected by aggravation is entitled to the additional benefit despite the fact that he or she may have had a measurable impairment on entrance into service. Base ratings only on an examination conducted in a VA authorized audiology clinic using current testing criteria (par. 50.11b). See paragraph 50.13a(1) for criteria for scheduling future examinations.

50.71 APHONIA

Rate as complete organic aphonia if there is a disability of the organs of speech which constantly precludes communication by speech. The veteran must be unable to communicate by voice or whisper through the normal organs of speech. The disability must be constant and it must have an organic basis. Such disability will most frequently result from loss or paralysis of an organ of speech such as the tongue or larynx. Entitlement to special monthly compensation may generally be based on total schedular ratings under diagnostic codes 6518, 6519, 6520, and 7202. The use of other organs of the body or prosthetic devices to provide voice sounds will not preclude entitlement.

50.72 BLINDNESS

The statutory allowance for blindness, one eye, requires a showing of loss of vision with light perception only, and does not contemplate that payment of the statutory allowance will be made for loss of vision when the affected eye is amenable to correction better than light perception. Loss of use of one eye means in effect that, were the vision in the good eye lost, total blindness would result. If an opaque lens is used over an eye otherwise normal to avoid diplopia, the requirements for the payment of additional special monthly compensation have not been met.

50.73 EXAMINATIONS IN SMC CLAIMS

a. Rating Board Function. Determination of loss of use is a rating board function and cannot be delegated to the examining physician. VA Form 21-2507, Request for Physical Examination, shall not contain requests to the examiner "to determine loss of use," or request the examiner to express an opinion as to "whether there is or is not loss of use" of an extremity or extremities. Rather, request the examiner to record all findings indicative of the severity, and to furnish a detailed objective description in terms of functional impairment and a quantitative assessment of strength for each extremity involved. *The responsibility for the determination as to whether there is loss of use of an extremity rests with the rating board.*

b. Requesting Examination. If issuing requests for examinations in claims involving SMC under 38 U.S.C. 314(l) through (n), exercise considerable care. For example, in a claim in which a prior examination clearly established loss of use of both lower extremities at a level preventing natural knee action, do not request a complete medical examination if the only issue at question is the extent of involvement of one or both of the upper extremities. Instead, request an "AT ONCE" examination with a notation that the examination is to be restricted to the degree of functional impairment of the upper extremities. If any examination report is not determinative for loss of use, request appropriate specialized examination.

50.74 SPECIAL MONTHLY COMPENSATION UNDER 38 U.S.C. 314 AND SPECIALLY ADAPTED HOUSING UNDER 38 U.S.C. 801(1)

a. General. If entitlement to SMC under 38 U.S.C. 314 exists on account of the loss, or loss of use, of both lower extremities, the veteran also meets the requirements of 38 U.S.C. 801(1). A veteran may not be held eligible for assistance in acquiring specially adapted housing, but denied special monthly compensation on the basis that "although the evidence of record does not establish loss of use of the lower extremities for SMC purposes, it is shown that the service-connected disabilities prevent locomotion without the aid of braces, crutches, canes or a wheelchair."

b. Application of 38 CFR 3.809(b)(3). Do not grant SMC for loss of use of an apparently normal lower extremity because of a veteran's inability to walk, if such inability is due to loss of use of the other lower extremity, not improvable by prosthesis, and loss of use of the paired upper extremity, which prevents ambulation by the use of crutches, canes or braces and confines the veteran to a wheelchair. In order to be entitled to SMC under 38 U.S.C. 314 on account of loss of use of both lower extremities, there must be a loss of use of each lower extremity as defined in 38 CFR 3.350(a)(2). However, such a case would meet the criteria of 38 U.S.C. 801 and 38 CFR 3.809(b)(3) for assistance in acquiring specially adapted housing.

SUBCHAPTER XVII. SPECIAL MONTHLY PENSION

50.75 AID AND ATTENDANCE

a. General. Greater disability is required for entitlement to the additional allowance for regular aid and attendance that for entitlement to the housebound rate or for a basic 100 percent schedular evaluation.

(1) The criteria for determining need for aid and attendance which appear in 38 CFR 3.352(a) provide that the veteran must be so helpless as to require the aid of another person to perform the personal functions required in everyday living. In addition, under the provisions of 38 CFR 3.351(c)(1), a veteran who has bilateral vision of 5/200, or less, is entitled to the aid and attendance allowance without requiring factual need.

(2) A single disability rated 100 percent under a schedular evaluation is generally a prerequisite to a determination of need for regular aid and attendance. (For definition of "single disability," see 38 CFR 4.16.) Any lesser disability would be incompatible with the requirements of 38 CFR 3.352(a).

(3) If a current examination is of record and the disability evaluation is less than 100 percent after a current examination, but it is considered that the disability is so severe as to demonstrate need for regular aid and attendance, submit the claim to Central Office [(214D)] for an advisory opinion (par. 19.03).

(4) If a single disability of 100 percent is assigned, consider entitlement to aid and attendance (par. 46.08c). If entitlement to aid and attendance is specifically denied, also consider entitlement to the housebound benefit. If entitlement to both aid and attendance and the housebound benefits are considered and denied, use rating code 19c to reflect this decision.

b. Pension [/Aid and Attendance] Claims Excepted From Rating Requirements

(1) A veteran entitled to disability pension under 38 U.S.C. 521 is presumed to be in need of aid and attendance if the veteran is a patient in a nursing home on account of mental or physical disability. In protected disability pension claims, an administrative rule provides that nursing home care will generally qualify a veteran for the aid and attendance allowance. Therefore, the criteria of nursing home patient status will be applied to current law and protected disability pension. A rating decisioin will not be required in any claim where entitlement to aid and attendance may be established under this presumption unless incidental to the concurrent disposition of other issues.

(2) If a claim in which aid and attendance has been properly authorized under 38 CFR 3.351(c)(2) without a rating is subsequently before the rating board for disposition of other issues, do not confirm by rating action the entitlement to aid and attendance established by reason of nursing home patient status.

50.76 HOUSEBOUND

a. Criteria. Veterans receiving or entitled to receive disability pension under 38 U.S.C. 521 or protected disability pension qualify for the nonservice-connected housebound rate if they have a single permanent disability rated 100 percent under a schedular evaluation and have other disabilities independently ratable at 60 percent or more, or are permanently housebound by reason of their disabilities (38 CFR 3.351(d) and 38 CFR 4.16). If a current examination is of record and the disability evaluation is less than 100 percent but it is considered that the disability is so severe as to demonstrate the claimant is housebound, submit the claim to Central Office [(214D)] for an advisory opinion (par. 19.03). Follow the criteria for determining entitlement to the service-connected housebound benefit when applicable. One major difference is that entitlement to the nonservice-connected benefit may be based on congenital, developmental, hereditary or familial conditions. (See 38 CFR 3.342(b)(1).) As the rating for the single, 100 percent nonservice-connected disability must be a schedular evaluation, a 100 percent rating based on individual unemployability will not suffice. A permanent total rating protected under 38 CFR 3.951 or 3.953 is sufficient if it is based on a single, 100 percent disability.

b. Permanency of Conditions. In nonservice-connected claims, the single 100 percent disability and the disability which causes the veteran to be housebound are required to the permanent. As for permanency of the 100 percent disability, any disability considered permanent in the rating of pension claims will meet this requirement. Permanency of the housebound state is discussed in subparagraph a above. There is no requirement of permanency for the independently ratable 60 percent disability. If an independent 60 percent disability which is not permanent is an essential part of a housebound determination, keep the claim under strict control.

c. Inclusion of Service-Connected Disabilities. Service-connected disabilities may be included in a nonservice-connected housebound rating. If the evaluation of a particular service-connected disability is protected under 38 CFR 3.951 or 3.952, evaluate the disability at its protected level.

[50.76.1 MEMORANDUM RATINGS FOR SPECIAL MONTHLY PENSION—PT RATINGS NOT REQUIRED

a. A rating evaluating a veteran's individual disabilities for pension purposes need not be prepared when denying or terminating entitlement to aid and attendance or housbound benefits if the following conditions exist:

(1) Medical evidence is of record which shows the veteran is not entitled to aid and attendance or housbound benefits;

(2) Additional medical evidence is needed to determine whether the veteran is permanently and totally disabled; and

(3) The veteran's income exceeds the applicable maximum annual pension rate without SMP entitlement but is less than the applicable maximum rate with SMP entitlement.

b. If the above conditions exist, prepare a memorandum rating denying SMP entitlement with the legend FOR VETERAN'S ENTITLEMENT TO SMP-AID AND ATTENDANCE OR HOUSEBOUND BENEFITS.]

50.77 RATING OF ARTERIOSCLEROSIS AND INVOLUTIONAL CHANGES

A problem has arisen in adequately evaluating the combined effects of arteriosclerosis and the aging process. Exercise care in evaluating such claims to ensure that benefits are allowed for each claimant actually housebound or in need of regular aid and attendance.

a. **Assignment of 100 Percent Evaluation.** If generalized arteriosclerosis is found in combination with involutional changes, including but not limited to, reduced mentation, bone and/or muscle atrophy, assign a 100 percent evaluation.

b. **Selection of Diagnostic Code.** In order to support the 100 percent evaluation, use a diagnostic code which employs the most suitable analogy and supports the 100 percent evaluation.

SUBCHAPTER XVIII. MISCELLANEOUS RATING CONSIDERATIONS

50.78 SERVICE CONNECTION–DIRECT OR PRESUMPTIVE

a. **General.** If service connection is claimed for a disease diagnosed after service, consider first the possibility of direct service connection (38 CFR 3.303(d)). Do not invoke presumption of service connection for chronic or tropical diseases until the possibility of direct service connection has been eliminated.

(1) If service connection is claimed for a disability first diagnosed after service, request development in appropriate claims to obtain evidence of direct service connection. Simultaneously, request evidence to support presumptive service connection.

(2) Do not routinely disallow claims for disabilities indicated as beginning after service merely because the veteran is not entitled to presumptive service connection, or because the disability is not subject to presumption (38 CFR 3.303(d)).

b. **Peacetime Service Before January 1, 1947.** The rules pertaining to direct and presumptive service connection are as follows:

(1) **Presumption of Soundness.** A veteran must have had active, continuous service of 6 months or more to be entitled to presumption of soundness upon entrance onto active duty (38 CFR 3.305(b)).

(2) **Presumptive Service Connection for Chronic Diseases.** There is no provision for presumptive service connection for chronic diseases (38 CFR 3.308(a)).

(3) **Presumptive Service Connection for Tropical Diseases.** A veteran must have had active, continuous service of 6 months or more to meet the requirements for presumptive service connection for diseases listed in 38 CFR 3.309(b). (See 38 CFR 3.308(b).)

c. **Wartime and Peacetime Service After December 31, 1946.** The rules pertaining to direct and presumptive service connection are as follows:

(1) **Presumption of Soundness.** There is no minimum active duty requirement to be met before the presumption of soundness upon enlistment can be invoked (38 CFR 3.304(b)).

(2) **Presumption of Service Connection.** A veteran who had active, continuous service of 90 days or more meets the requirements for presumptive service connection for either chronic diseases (38 CFR 3.309(a)) or tropical diseases (38 CFR 3.309(b)). (See 38 CFR 3.307.)

d. **Direct Service Connection.** A veteran who lacks the requisite 90 days or 6 months of service may be granted service connection only on a direct basis. Also, grant only direct service connection for any disability not included in 38 CFR 3.309.

e. **Definition of Continuous Active Service.** "Active continuous service" excludes lengthy periods of extended absence from duty such as unauthorized absence or other extended nonpay status. The facts and findings in the following General Counsel Opinion (4–80) are set forth for illustration.

(1) The servicemember was absent from duty for 1,344 days before returning to military control.

(2) The veteran received an honorable discharge 9 days later and developed a chronic disease within 1 year of discharge.

(3) Since the veteran was without active, continuous service for all but 9 days of the 3–3/4 years preceding separation, the continuous service requirement of 38 CFR 3.307 is not met.

[f. **Service Connection for Congenital/Developmental Conditions.** Service connection may be granted, if warranted, for diseases of congenital, developmental or familial (hereditary) origin which either first manifest themselves during service or which preexist service and progress at an abnormally high rate during service. Congenital or developmental defects are normally static conditions which are incapable of improvement or deterioration. A disease, even one which is hereditary in origin, e.g., retinitis pigmentosa, polycystic kidney disease, sickle cell diseases and Huntington's disease (chorea), is usually capable of improvement or deterioration.

(1) Diseases of hereditary origin can be considered to be incurred in service if their symptomatology manifested itself after entry on duty. The mere genetic or other familial predisposition to develop the symptoms, even if the individual is almost certain to develop the condition at some time in his/her lifetime, does not constitute having the disease. Only when symptomatology and/or pathology (in this context, an active disease process not just a mere predisposition to develop a disease which process may or may not precede symptomatology) exist can he/she be said to have developed the disease. At what point the individual starts to manifest the symptoms of, or have the pathological changes associated with the disease, is a factual issue and must be determined in each case based on all the medical evidence of record.

(2) A hereditary disease which manifests some symptoms before entry on duty, may be found to have been aggravated during service if it progresses during service at a rate greater than normally expected according to accepted medical authority. Again, this is a factual, medical determination which must be based upon the evidence of record and sound medical judgment.]

50.79 DEFINITION OF INJURY—38 U.S.C. 101(24) and 38 CFR 3.6(a)

Active service is defined as including any period of inactive duty for training during which the claimant was disabled or died from an injury incurred or aggravated in line of duty. Nontraumatic incurrence or aggravation of a disease process during a period of inactive duty training is not defined as an injury. For example, manifestations of cardiovascular disease, such a myocardial infarction of nontraumatic origin, are not to be considered an "injury"; to meet the requirements of 38 CFR 3.6.

50.80 RATING CLAIMS BASED ON PRISONER OF WAR STATUS

If a former POW files a claim alleging service connection for a disability incurred just prior to internment or during confinement, [ ] accept the veteran's statement as to wounds or injuries incurred just prior to internment or while confined as proof of actual occurrences of the condition in question if residual disability is noted which can be attributed to the service incident. Although 38 CFR 3.304(e) is intended to be given liberal application, there must be a reasonable basis for establishing service connection. Intercurrent diseases or injuries would generally obviate a relationship between disabilities claimed and the POW experience, as provided by 38 CFR 3.307(d).

EXAMPLE: The veteran has degenerative arthritis of the left knee and alleges trauma to the left knee shortly before capture. Service medical records are negative. If the first appearance of the arthritis was at an age earlier than would be anticipated, a reasonable basis for the granting of service connection exists.

a. **Absence of Records.** In many POW claims there is a paucity or complete absence of records of treatment or diagnosis of diseases or injuries during the confinement period. If disabilities are first diagnosed after service, give special attention to the veteran's POW experiences in determining the relationship of such disabilities to service. Consider both the duration and circumstances of the veteran's imprisonment as well as pertinent medical principles in these determinations. A special medical and social history of the POW experience shall be obtained at the time of examination, and made a permanent part of the veteran's records. Review the protocol history in order to gain insight and understanding of the factors affecting the veteran's internment as a POW. See paragraph 22.06a(2) for procedures to obtain POW debriefing records and 22.06b as to the requirement for a social survey.

o. **Presumption of Service Connection.** The conditions set forth in 38 CFR 3.309(c) are subject to presumptive service connection for former POW's confined 30 days or more. If any of these conditions becomes manifest to a degree of 10 percent or more at any time after service, service connection is in order. It follows that any conditions which are recognized by accepted medical principles to be secondary to any of the conditions listed in 38 CFR 3.309(c) are likewise subject to presumptive service connection.

c. **No Specific Disability Claimed.** Symptoms presented by the veteran may be the result of the POW experience, or of the diseases subject to presumptive service connection, even though the veteran has not alleged a specific disability. For example, the chronic residuals of nutritional deficiency can present themselves in a variety of complaints. Be alert to this possibility and ensure that examinations are complete and comprehensive. If it is unclear whether a condition is a residual of the POW experience, submit the claim to Central Office [(214D)] for an advisory opinion.

50.81 ANALOGOUS RATING

If an unlisted condition is encountered, rate under a closely related disease or injury by utilizing a "99" code followed by the diagnostic code for the closely related disease or injury. If a "99" code is utilized, it *must* be followed by the diagnostic code for the closely related disease or injury, if an evaluation is assigned. The term "evaluation" includes a 0 percent evaluation.

EXAMPLE 1: Service connection is assigned for chronic obstructive pulmonary disease, which is not listed in the rating schedule. Rate the condition analogous to a closely related pulmonary condition such as pulmonary emphysema and utilize diagnostic code 6699–6603. The percentage assigned must be supported by diagnostic code 6603.

EXAMPLE 2: If the rating schedule calls for rating a specific disability analogous to another listed condition; e.g., coronary artery bypass is to be rated as arteriosclerotic heart disease 1 year postsurgery, use a hyphenated code listing the primary condition first followed by the code for the disability supporting the percentage assigned. In this example the coding is 7017–7005 and the percentage of disability assigned must be supported by the second diagnostic code shown.

)TE: Never use more than two hyphenated diagnostic codes to support an assigned percentage.

50.82 ABBREVIATIONS AND SYMBOLS

A listing of common medical abbreviations and symbols is found in addendum B to this chapter.

50.83 SPECIAL COMPENSATION FOR CERTAIN PAIRED ORGANS OR EXTREMITIES (38 CFR 3.383)

a. **Entitling Criteria.** Compensation is payable to veterans in the following cases as if the combination of disabilities were the result of service–connected disability provided the nonservice–connected disability is not the result of the veteran's own willful misconduct:

(1) Blindness in one eye due to service-connected disability and blindness in the other eye due to nonservice-connected disability (effective August 28, 1962).

(2) Loss or loss of use of one kidney due to service-connected disability and involvement of the other kidney due to nonservice-connected disability (effective October 28, 1986).

NOTE: Effective August 28, 1962, there must have been severe involvement of the nonservice-connected kidney such as to cause total disability as a result of such nonservice–connected disability.

(3) Total deafness in one ear due to service-connected disability and total deafness in the other ear due to nonservice-connected disability (effective December 1, 1965).

~~(3) Total deafness in one ear due to service-connected disability and total deafness in the other ear due to nonservice-connected disability (effective December 1, 1965).~~

Errata to chg 478 (7/7/89)

(4) Loss or loss of use of one hand or foot due to service-connected disability and loss or loss of use of the other hand or foot due to nonservice–connected disability (effective October 28, 1986).

(5) Permanent service–connected disability of one lung, rated 50 percent or more disabling, in combination with nonservice–connected disability of the other lung (effective October 28, 1986).

b. **Prohibitions Against Duplication of Benefits.** See chapter 29, subchapter IX.

ADDENDUM A

CHANGES IN PSYCHIATRIC NOMENCLATURE

Addendum A reflects the change to psychiatric nomenclature over the years. For convenience, the psychiatric nomenclature will be shown beneath the various diagnostic codes. The diagnostic code shown first is the current diagnostic code from the 1957 loose-leaf edition of the rating schedule, and the second diagnostic code shown in parenthesis is the corresponding diagnostic code for that diagnosis from the 1945 edition of the Schedule for Rating Disabilities.

EXAMPLE: New: 9201 Old: (9002)

a. Psychiatric nomenclature used in the 1945 edition of the Schedule for Rating Disabilities.

b. Psychiatric nomenclature used in the 1957 loose-leaf edition of the rating schedule.

c. Most recent psychiatric nomenclature as shown in the third edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, DSM-III.

Diagnostic Codes

I. Psychotic Disorders

9200 (9000)

a. Dementia Praecox, simple type

b. Schizophrenia, simple type

c. Schizotypal, personality disorder

NOTE: Service connection for schizophrenia, simple type, previously granted will not be disturbed. The DSM-III concept of schizophrenia requires the presence of psychotic features at some time during illness. Furthermore, the validity of the category of simple schizophrenia has been questioned. The closest approximation is schizotypal personality disorder.

9201 (9002)

a. Dementia Praecox, hebephrenic type

b. Schizophrenia, hebephrenic type

c. Schizophrenia, disorganized type

9202 (9001)

a. Dementia Praecox, catatonic type

b. Schizophrenia, catatonic type

c. Schizophrenia, catatonic type

9203 (9003)

a. Dementia Praecox, paranoid type

b. Schizophrenia, paranoid type

c. Schizophrenia, paranoid type

9204 (none)

a. None

b. Schizophrenia, chronic, undifferentiated type

c. Schizophrenia, undifferentiated type

9205 (9004)

a. Dementia Praecox, mixed type

b. Schizophrenia other, and unspecified types

c. Schizophrenia, residual type, or schizoaffective disorder

9206 (9005)

a. Manic depressive psychosis

b. Manic depressive illness (specify type)

c. Bipolar disorder (manic, depressed, mixed)

9207 (none)

a. None

b. Psychotic Depressive Reaction

c. Major Depression

9208 (9006)

a. Paranoia

b. Paranoid status (specify type)

c. Paranoid disorders (specify type)

9209 (none)

a. None

b. Involutional melancholia or involutional paranoid state

c. Major depression or paranoia

9210 (9008)

a. Post-traumatic personality disorders

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9009)

a. Post-traumatic mental deterioration

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9010)

a. Psychosis due to trauma, other types

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9011)

a. Psychosis due to or associated with meningo-encephalitic type (general paresis)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9012)

a. Psychosis due to or associated with meningovascular type (cerebral syphilis)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9013)

a. Psychosis with intercranial gumma

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9014)

a. Psychosis due to or associated with infection (other types to be specified)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9015)

a. Psychosis with tuberculosis meningitis

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9016)

a. Psychosis with meningitis (unspecified)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9017)

a. Psychosis with epidemic encephalitis

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9018)

a. Psychosis with acute chorea (Sydemham's)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9019)

a. Psychosis with other infectious disease (to be specified)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9020)

a. Post-infectious psychosis (infection to be specified)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9021)

a. Psychosis due to pathological intoxication

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9022)

a. Psychosis due to delirium tremens

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9023)

a. Korsakoff's psychosis

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9024)

a. Psychosis due to acute hallucinosis

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9025)

a. Psychosis due to intoxication

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9026)

a. Psychosis, due to Metals (specified)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9027)

a. Psychosis due to gases (specified)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9028)

a. Psychosis due to opium and derivatives

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9029)

a. Psychosis due to other drugs (specified)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9030)

a. Psychosis with cerebral embolism

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9031)

a. Psychosis with cerebral arteriosclerosis

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9032)

a. Psychosis with cardiorenal disease

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9033)

a. Other types of psychosis due to disturbance of circulation (specify)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9034)

a. Epileptic deterioration

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9035)

a. Epileptic clouded states

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9036)

a. Other epileptic types

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9037)

a. Simple deterioration (senile psychosis)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9038)

a. Presbyophrenic type (senile psychosis)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9039)

a. Senile psychosis, delirious and confused types

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9040)

a. Senile psychosis, depressed and agitated types

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9041)

a. Senile psychosis, paranoid types

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9042)

a. Alzheimer's Disease

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9043)

a. Involutional psychosis, melancholia

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9044)

a. Involutional psychosis, paranoid types

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9045)

a. Involutional psychosis, other types (specify)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9046)

a. Psychosis with diseases of the endocrine glands (specify)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9047)

a. Exhaustion Delirium

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9048)

a. Psychosis with pellagra

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9049)

a. Psychosis with other somatic diseases (specify)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9050)

a. Psychosis with intercranial neoplasms

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9051)

a. Psychosis with other neoplasms (specify)

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9052)

a. Psychosis with multiple sclerosis

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9053)

a. Psychosis with paralysis agitans

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9054)

a. Psychosis with Huntington's Chorea

b. Psychosis, unspecified

c. Atypical psychosis

9210 (9055)

a. Psychosis with other brain or nervous disease (specify)

b. Psychosis, unspecified

c. Atypical psychosis

NOTE: The diagnosis of latent schizophrenia is still being encountered. Rating boards must be aware that latent schizophrenia is not a proper diagnosis. Handle claims for service connection for latent schizophrenia similar to claims for personality disorders; i.e., a superimposed psychotic reaction in service, or within the presumptive period, would be a proper basis for service connection.

II. Psychoneurotic Disorders

9400 (9104)

a. Anxiety hysteria

b. Anxiety neurosis

c. Generalized anxiety disorder

9400 (9105)

a. Anxiety state

b. Anxiety neurosis

c. Generalized anxiety disorder

9401 (none)

a. None

b. Hysterical neurosis, dissociative type

c. Psychogenic amnesia, psychogenic fugue, or multiple personality

9402 (9100)

a. Hysteria, conversion (specify type)

b. Hysterical neurosis, conversion type

c. Conversion disorder or psychogenic pain disorder

9403 (none)

a. None

b. Phobic neurosis

c. Phobic disorders

9404 (none)

a. None

b. Obsessive compulsive neurosis

c. Obsessive compulsive disorder

9405 (none)

a. None

b. Depressive neurosis

c. Dysthymic disorder

9407 (9101)

a. Neurasthenia

b. Neurasthenic neurosis

c. Adjustment disorder with depressed mood

9408 (9103)

a. Psychasthenia

b. Depersonalization neurosis

c. Depersonalization disorder

9409 (9102)

a. Hypochondriasis

b. Hypochondriacal neurosis

c. Hypochondriasis

9410 (9106)

a. Psychoneurosis, mixed types

b. Neurosis, other and unspecified

c. None

9411 (none)

a. None

b. Post-traumatic stress neurosis

c. Post-traumatic stress disorder

III. Psychophysiologic Disorders

9500 through 9511

a. Shown below

b. Psychological factors affecting physical condition (physical condition will be included)

c. Same as b

9501 (9110)

a. Neurocirculatory asthenia (effort syndrome)

b. Psychophysiologic cardiovascular disorder

c. Same as b

9501 (9111)

a. Neurosis, cardiac

b. Psychophysiologic cardiovascular disorder

c. Same as b

9505 (9112)

a. Anorexia nervosa

b. Psychophysiologic gastrointestinal disorder

c. Same as b

IV. Organic Mental Disorders

DSM (Diagnostic and Statistical Manual) III no longer divides the Organic Brain Syndromes into psychotic and nonpsychotic. Prior distinctions were made on the basis of severity, mode of onset and presumptions concerning prognosis. The present classification, based on clinical symptoms alone, leads to duplication in some cases in the rating schedule. Prior distinctions are temporarily maintained pending revision of the rating schedule. If there is duplication, employ diagnostic codes 9301 through 9311, when appropriate. The nomenclature currently used in the rating schedule is shown on the left, and the new nonmenclature per DSM III is shown on the right.

Diagnostic Codes	Rating Schedule	DSM III
9300	Acute nonpsychotic brain disorder (specify the cause) with infection trauma, circulatory disturbance, etc.	Delirium associated with infection, trauma, circulatory disturbance, etc.
9301	Nonpsychotic organic brain syndrome with central nervous system syphilis (all forms)	Dementia associated with central nervous system syphilis
9302	Nonpsychotic organic brain syndrome with intracranial infections other than syphilis (specify infection)	Dementia associated with intracranial infections other than syphilis
9303	Nonpsychotic organic brain syndrome with intoxication (specify cause such as alcoholic deterioration)	Dementia associated with alcoholism
9304	Nonpsychotic organic brain syndrome with brain trauma	Dementia associated with brain trauma
9305	Nonpsychotic organic brain syndrome with cerebral arteriosclerosis	Multi-infarct dementia
9306	Nonpsychotic organic brain syndrome with circulatory disturbance other than cerebral arteriosclerosis (specify circulatory disturbance)	Multi-infarct dementia
9307	Nonpsychotic organic brain syndrome with convulsive disorder (idiopathic epilepsy)	Dementia associated with convulsive disorder (idiopathic epilepsy)
9308	Nonpsychotic organic brain syndrome with disturbance of metabolism, growth or nutrition	Dementia associated with disturbances of metabolism
9309	Nonpsychotic organic brain syndrome with intracranial neoplasm	Dementia associated with brain tumor
9310	Nonpsychotic organic brain syndrome with unknown or uncertain causes	Dementia due to unknown cause
9311	Nonpsychotic organic brain syndrome of undiagnosed cause	Dementia due to undiagnosed cause
9312	Psychosis associated with organic brain syndrome due to senile dementia	Dementia primary degenerative
9313	Psychosis associated with organic brain syndrome to chronic alcoholic poisoning	Dementia associated with alcoholism
9314	Psychosis associated with organic brain syndrome due to syphilis (all forms)	Dementia associated with syphilis

Diagnostic Codes	Rating Schedule	DSM III
9315	Psychosis associated with organic brain syndrome due to epidemic encephalitis	Dementia associated with epidemic encephalitis
9316	Psychosis associated with organic brain syndrome due to other and unspecified intracranial infection	Dementia associated with unspecified intracranial infection
9317	Psychosis associated with organic brain syndrome due to cerebral arteriosclerosis	Multi-infarct dementia
9318	Psychosis associated with organic brain syndrome due to cerebrovascular disturbance	Multi-infarct dementia
9319	Psychosis associated with organic brain syndrome due to epilepsy	Dementia associated with epilepsy
9320	Psychosis associated with organic brain syndrome due to intracranial neoplasm	Dementia associated with brain tumor
9321	Psychosis associated with organic brain syndrome due to brain trauma	Dementia associated with brain trauma
9322	Psychosis associated with organic brain syndrome due to endocrine disorder	Dementia associated with endocrine disorder
9323	Psychosis associated with organic brain syndrome due to metabolic or nutritional disorder	Dementia associated with metabolic or nutritional disorder
9324	Psychosis associated with organic brain syndrome due to systemic infection	Dementia associated with systemic infection
9325	Psychosis associated with organic brain syndrome due to drug or poison intoxication (other than alcohol)	Dementia associated with drug or poison intoxication (other than alcohol)
9326	Psychosis associated with organic brain syndrome due to other and undiagnosed physical condition	Dementia associated with undiagnosed physical condition

ADDENDUM B

MEDICAL ABBREVIATIONS AND SYMBOLS

The purpose of this addendum is to facilitate the interpretation of abbreviations and symbols most commonly appearing in hospital clinical, examination, and outpatient treatment reports. The following abbreviations and symbols are used by the rating board in the interpretation of medical reports and in the preparation of the rating decision.

I. Abbreviations

ABG	Arterial Blood Gases
AD	Right Ear
AE	Above Elbow
AFB	Acid Fast Bacillus
AK	Above Knee
ANT	Anterior
AODM	Adult Onset Diabetes Mellitus
AP	Anterior-Posterior
A&P	Auscultation and Percussion
AS	Left Ear
ASCVD	Arteriosclerotic Cardio Vascular Disease
ASHD	Arteriosclerotic Heart Disease
ASO	Arteriosclerotic Obliterans
ASPVD	Asteriosclerotic Peripheral Vascular Disease
AU	Both Ears
BBB	Bundle Branch Block (ECG Finding)
b.i.d.	Two times a day
BK	Below Knee
BLE	Both Lower Extremities
BMR	Basal Metabolic Rate
BP	Blood Pressure
BS	Bowel Sounds

BUN	Blood Urea Nitrogen
C	Cervical or Celsius
CA	Carcinoma
CABG	Coronary Artery-by-Pass Graft
CAD	Coronary Artery Disease
CBC	Complete Blood Count
CBS	Chronic Brain Syndrome
CC	Chief Complaint
CHF	Congestive Heart Failure
CM	Centimeter
CNS	Central Nervous System
C/O	Complaints of
COLD	Chronic Obstructure Lung Disease
COPD	Chronic Obstructure Pulmonary Disease
CPR	Cardiopulmonary Resuscitation
CSF	Cerebrospinal Fluid
CT	Computed Tomography
CVA	Cerebral Vascular Accident or Costo Vertebral Angle
DAH	Disordered Action of the Heart (neurocirculartory asthenia)
D/C	Discontinue
D&C	Dilation and Curretage
DIP	Distal Interphalangeal (Joint)
DJD	Degenerative Joint Disease
DNEPTE	Did Not Exist Prior to Enlistment
DNIF	Duty Not Involving Flying
DOE	Dyspnea on Exertion
DTR	Deep Tendon Reflexes

DT'S	Delirium Tremors
EENT	Eyes, Ears, Nose and Throat
ECG	Electrocardiogram
EEG	Electroencephalogram
EMG	Electromyogram
EPTE	Existed Prior to Enlistment
EST	Electroshock Therapy
FANA	Fluorescent Anti Nuclear Antibody (Blood Test)
FB	Foreign Body
FBS	Fasting Blood Sugar
FH	Family History
FROM	Full Range of Motion
FSH	Follicle-Stimulating Hormone
FU	Followup
FUO	Fever of Undertermined Origin
FWB	Full Weight Bearing
FX	Fracture
GI	Gastrointestinal
GSW	Gunshot Wound
GTT	Glucose Tolerance Test
GU	Genitourinary
HbS	Sickle Cell Hemoglobin
HcT	Hematocrit
HCVD	Hypertensive Cardiovascular Disease
Hgb	Hemoglobin
HNP	Herniated Nucleus Pulposus
Hx	History

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Hz	Hertz (cycles/second)
ICU	Intensive Care Unit
IHD	Ischemic Heart Disease
IHSS	Idiopathic Hypertrophic Subaortic Stenosis
IM	Intramuscle
IMP	Impression
INC	Incurred
INF	Inferior
INH	Isoniazid
IOP	Intraocular Pressure
IPPB	Inspiratory Positive Pressure Breathing
IV	Intravenous
IVD	Intraverebral Disc
IVP	Intravenous Pyelogram
JVD	Jugular Venous Distention
K	Potassium
KJ	Knee Jerk (Reflex)
KUB	Kidney, Ureter and Bladder
L	Lumbar
LAD	Left Anterior Descending (artery)
LAT	Lateral
LBP	Low Back Pain
LCM	Left Costal Margin
LE	Lupus Erythematous
LFT	Liver Function Test
LKS	Liver, Kidneys, Spleen
LLC	Long Leg Cast

LLE	Left Lower Extremity
LLL	Left Lower Lobe
LLQ	Left Lower Quadrant
LOD	Line of Duty
LOM	Limitation of Motion
LS	Lumbosacral
LUE	Left Upper Extremity
LUL	Left Upper Lobe
LVH	Left Ventricular Hypertrophy
MCL	Mid-Clavicular Line
MCP	Metacarpophalangeal (joint)
MED	Median
MFB	Metallic Foreign Body
MG	Muscle Group
MHC	Mental Hygiene Clinic
MI	Myocardial Infarction
MS	Multiple Sclerosis
MSL	Mid-Sternal Line
MTP	Metatarsophalangeal (joint)
NAD	No Acute Distress
NCD	Not Considered Disabling
NL	Normal
NPN	Nonprotein Nitrogen
NSA	No Significant Abnormality
N&V	Nausea and Vomiting
NWB	Nonweight Bearing
OBS	Organic Brain Syndrome

OD	Right Eye
O&E	Observation and Examination
OOP	Out of Prosthesis
OPT	Outpatient Treatment
ORIF	Open Reduction Internal Fixation
OS	Left Eye
OTC	Over-the-Counter
OU	Both Eyes
PCO2	Carbon Dioxide Pressure
PH	Past History
PI	Present Illness
PID	Pelvic Inflammatory Disease
PIP	Proximal Interphalangeal (joint)
PMD	Private Medical Doctor
PMI	Point of Maximal Impulse
PND	Paroxysmal Nocturnal Dyspnea
PO	Postoperative or Orally
PO2	Oxygen Pressure
POW	Prisoner of War
PPD	Positive Purified Protein (TB Test)
PR	P-R Interval (Part of ECG)
PRN	As Needed
PT	Physical Therapy or Prothrombin Time
PTA	Prior to Admission
PTB	Patellar Tendon Bearing (Prosthesis)
PUD	Peptic Ulcer Disease
PV	Peripheral Vascular

PVC	Premature Ventricular Contraction
PWB	Partial Weight Bearing
q	Every
q.i.d.	Four times a day
RA	Rheumatoid Arthritis
RBC	Red Blood Count
RCA	Right Coronary Artery
RCM	Right Costal Margin
RF	Rheumatoid Factor of Rheumatic Fever
RFB	Retained Foreign Body
RHD	Rheumatic Heart Disease
RLE	Right Lower Extremity
RLL	Right Lower Lobe
RLQ	Right Lower Quadrant
R/O	Rule Out
ROM	Range of Motion
ROS	Review of Symptoms
RSR	Regular Sound and Rhythm
RTC	Return to Clinic
RTW	Return to Work
RUE	Right Upper Extremity
RUL	Right Upper Lobe
RUQ	Right Upper Quadrant
RVH	Right Ventricular Hypertrophy
Rx	Therapy, Prescription
S	Sacral
S_1 S_2 S_3 S_4	Heart Sounds

SAP	Substance Abuse Program
SC	Service Connected
SFW	Shell Fragment Wound
SLC	Short Leg Cast
SLE	Systemic Lupus Erythematous or Slit Lamp Examination
SLR	Straight Leg Raising
SLWC	Short Leg Walking Cast
SMR's	Service Medical Records
SNHL	Sensory Neural Hearing Loss
SOAP	Subjective, Objective, Assessment, Plan
SOB	Shortness of Breath
S/P	Status Post
S/PO	Status of Postoperative
SRT	Speech Reception Threshold
STS	Serological Test for Syphilis
SX	Symptoms
T	Thoracic
TB	Tuberculosis
TIA	Transcient Ischemic Attack
t.i.d.	Three times a day
TM	Tympanic Membrane
TPR	Temperative, Pulse, Respiration (rate)
TURP	Transurethral Resection of the Prostate
UCD	Usual Childhood Diseases
URI	Upper Respiratory Infection
UTI	Urinary Tract Infection
VC	Vital Capacity

VDRL	Venereal Disease Research Laboratories (VD Test)
VIS	Visual Impairment Service
VSULA	Vaccination Scar Upper Left Arm
WBC	White Blood Count
WH	Well Healed
WD	Well Developed
WFE	Williams Flexion Exercises
WIA	Wounded in Action
WJ	Wrist Jerk (reflex)
WN	Well Nourished
WNL	Within Normal Limits

II. Symbols

c̄	With
s̄	Without
Ⓛ	Left
Ⓜ	Murmur
Ⓡ	Right
p̄	Post
ā	Before
±	Not Definite
↓	Decrease or Depression
↑	Increase or Elevation
0	Normal
>	Greater Than
<	Less Than
♂	Male
♀ or ♂	Female
/	Per
x̄	Times
i̇	One
ii̇	Two
iii̇	Three
Δ	Change

ADDENDUM C

HISTORY OF SMC (SPECIAL MONTHLY COMPENSATION)

1. This addendum has been designed for use by rating specialists when reviewing prior ratings for accuracy in the grant of SMC. Remember that prior ratings can appear to be erroneous based upon current criteria for the payment of SMC, but may in fact have been totally correct based upon the criteria in effect at the time of the prior rating decision. However, keep in mind that this addendum is only an overlay of the history of SMC. Not all of the historical aspects involving the payment of SMC have been covered. If there is any question as to the proper level of SMC payable, submit the claim folder to Central Office [(214D)] for an advisory opinion.

a. The following chart reflects the history of SMC from July 1, 1933 (Public Law 73-2). Prior to that date, various levels of SMC were payable under the provisions of the World War Veterans' Act of 1924. This addendum does not cover those limited number of cases where the criteria for SMC before July 1, 1933, would be at issue.

b. For simplicity, a breakdown is provided for each of the levels of SMC. Where appropriate, cross-reference to other levels of SMC have been made where there are, or were, restrictions in the simultaneous payment of one or more levels of SMC.

SMC CHANGES; JULY 1, 1933 TO THE PRESENT

Public Law; effective date	K	L	M	N	O	P	Q	R	S	T
(1) Public Law 73-2 (7-1-33)	1	1	1	1	1					
(2) Public Law 79-182 (10-1-45)	2	2	2	2	2	1				
(3) Public Law 82-427 (8-1-52)	2						1			
(4) Public Law 84-969 (10-1-56)	2									
(5) Public Law 85-652 (9-1-58)			2							
(6) Public Law 85-782 (10-1-58)					4	4		1		
(7) Public Law 86-663 (9-1-60)	4								1	
(8) Public Law 88-20 (7-1-63)	2									
(9) Public Law 88-22 (7-1-63)	2									
(10) Public Law 89-311 (12-1-65)					2	2				
(11) Public Law 90-77 (10-1-67)	4					4			4	
(12) Public Law 90-493 (8-19-68)							3			
(13) Public Law 95-479 (10-1-78)						2		2		1
(14) Public Law 96-128 (10-1-79)								2		
(15) Public Law 97-66 (10-1-81)		2	2	2	2	2				
(16) Public Law 97-306 (10-1-82)				2		2				
(17) Public Law 98-223 (10-1-83)					2	2				
[(18) Public Law 99-576 (10-28-86)										3]

LEGEND

1—Initial authority for this subsection.
2—Amended.
3—Deleted.
4—Change involving restriction of payment.

2. Title 38 U.S.C. 314(k)

a. *Public Law 73-2, effective July 1, 1933,* established the following criteria for the payment of (k):

(1) The anatomical loss, or loss of use, of only (a) one foot, (b) one hand, or (c) one eye.

(2) SMC under (k) was payable in addition to the rates of compensation of 10 percent through 100 percent. It *was not* payable in addition to SMC subsections (l) through (n). Also, only *one* rate of SMC under (k) was payable, even though there may have been multiple losses. For example, if the veteran had the loss of one foot, plus the loss of one eye, the rate payable would have been the appropriate percentage for the degree of disability, plus one (k).

b. *Public Law 79-182, effective October 1, 1945,* amended the criteria for the payment of (k).

(1) Blindness of one eye was defined as having only light perception. In fact, this was the criterion applied previously, but this law clarified this standard.

(2) The criterion for the payment (k) was changed to allow the payment of (k) in addition to SMC, (l) through (n), for each loss, or loss of use under (k). However, the prohibition against the payment of more than one (k) in addition to rates of compensation of 10 percent through 100 percent was continued.

c. *Public Law 82-427, effective August 1, 1952,* amended the criterion for the payment of (k) to include the anatomical *loss, or loss of use, of a creative organ.*

d. *Public Law 84-969, effective October 1, 1956,* amended the criterion for the payment of (k) to include the anatomical *loss, or loss of use, of both buttocks.*

e. *Public Law 86-663, effective September 1, 1960,* created a new level of SMC, (s). SMC under (k) was not payable in addition to (s). Also, if the additional 60 percent disability establishing entitlement to (s) included entitlement to (k), payment was to be made at the 100 percent + (k) level as this was a greater benefit than 100 percent + (s).

f. *Public Law 88-20, effective July 1, 1963,* amended the criterion for the payment of (k) to include *deafness in both ears,* having absence of air and bone conduction.

g. *Public Law 88-22, effective July 1, 1963,* amended the criterion for the payment of (k) to include *organic aphonia* with constant inability to communicate by speech.

h. *Public Law 90-77, effective October 1, 1967,* amended (k) to allow payment for *each* loss of use in addition to the rates of compensation through 100 percent and also in addition to (s). (See Public Law 79-182, Public Law 86-663 and Adjudication, Transmittal Sheet 407.) The prohibition against using an additional ratable disability to provide an intermediate rate (50 percent) under 38 U.S.C. 314(p), when the same disability had been used as the basis for establishing entitlement under (k) was removed. (See Adjudication, Transmittal Sheet 415.)

3. Title 38 U.S.C. 314(l)

a. *Public Law 73-2, effective July 1, 1933,* established the following criterion for the payment of (l):

(1) The anatomical loss, or loss of use, of (a) both hands, or (b) both feet, or (c) one hand and one foot, or (d) being so helpless as to be in need of regular aid and attendance.

(2) As Public Law 73-2 did not provide for the payment of intermediate levels of SMC, the level of loss, or loss of use, had no effect on the level of SMC payable. For example, amputation of one arm above the elbow and the below-elbow amputation of the other arm would establish entitlement to (l).

b. *Public Law 79-182, effective October 1, 1945,* amended the criterion for the payment of (l) as follows:

(1) Entitlement under (l) was established if the veteran was *blind in both eyes* with 5/200 (1.5/60) visual acuity, or less.

(2) Entitlement under (l) was established if the veteran was *permanently bedridden.*

(3) For the purposes of entitlement under (l), concentric contraction of the field of vision *beyond 10 degrees* was considered the equivalent of 5/200 (1.5/60) visual acuity.

NOTE 1: Extension VII—paragraph 5 (change to the 1945 rating schedule) amended this criterion to be concentric contraction to 5 degrees or less, effective July 6, 1950.

NOTE 2: Public Law 79-182 added payment of intermediate levels of SMC. (See 38 U.S.C. 314(p).)

c. *Public Law 97-66, effective October 1, 1981,* deleted the reference to the loss or loss of use of both hands from subsection (l). As of this date the loss or loss of use of both hands became one of the criteria for entitlement under (m). (See Adjudication, Transmittal Sheet 703.)

4. Title 38 U.S.C. 314(m)

a. *Public Law 73-2, effective July 1, 1933,* established the criterion for the payment of (m) as (1) the anatomical loss, or loss of use, of *three extremities* or (2) *blindness in both eyes,* having only light perception.

b. *Public Law 79-182, effective October 1, 1945,* completely altered the criterion for the payment of (m).

(1) Entitlement under (m) was established if the veteran had the anatomical loss, or loss of use, of two extremities at a level, or with complications, preventing natural elbow or knee action with prosthesis in place.

(2) Entitlement under (m) was also established if the veteran was blind in both eyes which rendered the veteran so helpless as to be in need of regular aid and attendance.

c. *Public Law 85-652, effective September 1, 1958,* amended the criteria for (m) to reinstate *blindness in both eyes having only light perception.*

d. *Public Law 97-66, effective October 1, 1981,* altered the criterion for (m) as follows:

(1) The loss, or loss of use, of both hands was elevated from (l) to (m).

(2) The level of SMC payable for the loss, or loss of use, of both arms at levels or with complications, preventing natural elbow action with prosthesis in place was removed from (m) and increased to (n). (See Adjudication, Transmittal Sheet 703.)

5. Title 38 U.S.C. 314(n)

a. *Public Law 73-2, effective July 1, 1933,* established the criterion for the payment of (n) as *blindness* in both eyes, having only light perception, *plus,* the anatomical loss, or loss of use, of *one extremity.*

b. *Public Law 79-182, effective October 1, 1945,* completely altered the criterion for the payment of (n).

(1) Entitlement under (n) was established if the veteran had the *anatomical* loss of two extremities so near the shoulder or hip as to prevent the use of a prosthetic appliance; or

(2) The anatomical loss of both eyes, or total blindness of both eyes having no light perception accompanied by phthisis bulbi, evisceration, or other obvious deformity or disfigurement.

c. *Public Law 97-66, effective October 1, 1981,* altered the criterion for (n) as follows:

(1) The level of SMC payable for the loss, or loss of use, of both arms at levels or with complications, preventing natural elbow action with prosthesis in place, was elevated from (m) to (n).

(2) The level of SMC payable for the anatomical loss of both arms so near the shoulder as to prevent the use of a prosthetic appliance was removed from (n) and increased to (o). (See Adjudication, Transmittal Sheet 703.)

d. *Public Law 97-306, effective October 1, 1982,* amended subsection (n) to include *blindness without light perception in both eyes.* The previous requirement that there be phthisis bulbi, evisceration, or other obvious deformity or disfigurement was removed. (See Public Law 79-182 and Adjudication, Transmittal Sheet 721.)

6. **Title 38 U.S.C. 314(o)**

a. *Public Law 73-2, effective July 1, 1933,* established the criterion for the payment of (o) as entitlement to two or more of the rates payable under subsections (l) through (n), with no specified condition being considered twice.

b. *Public Law 79-182, effective October 1, 1945,* amended subsection (o) to include *bilateral blindness* of 5/200 (1.5/60) visual acuity, or less, in combination *with bilateral total deafness.* The (o) rate was also intended to cover transverse myelitis with loss of use of both legs and loss of anal and bladder control.

c. *Public Law 85-782, effective October 1, 1958,* created a new level of SMC under subsection (r). See the discussion in paragraph 3 under 38 U.S.C. 314(p) in reference to the payment under subsection (r) for those veterans entitled under (o).

d. *Public Law 89-311, effective December 1, 1965,* altered the above criteria for (o) (Public Law 79-182) to read bilateral deafness (with the hearing impairment in one or both ears service connected) rated at 60 percent, or more, plus service-connected total blindness with 5/200 (1.5/60) visual acuity, or less. (See Adjudication, Transmittal Sheet 364.)

e. *Public Law 97-66, effective October 1, 1981,* amended subsection (o) to include the anatomical loss of both arms so near the shoulder as to prevent the use of prosthetic appliances. Previously, this criteria established entitlement to (n). (See Adjudication, Transmittal Sheet 703.)

f. *Public Law 98-223, effective October 1, 1983,* amended subsection (o) to include service-connected *total deafness in one ear,* or *bilateral deafness* (and the hearing impairment in either or both ears is service connected) *rated at 40 percent* or more, with *bilateral blindness having only light perception, or less.*

7. **Title 38 U.S.C. 314(p)**

a. *Public Law 73-2, effective July 1, 1933,* did not contain any provisions for intermediate rates.

b. *Public Law 79-182, effective October 1, 1945,* established intermediate steps of SMC, if the veteran's service-connected disabilities exceeded the requirements for any of the levels of SMC, (l) through (n).

(1) "L½"—The anatomical loss, or loss of use, of one hand or one foot, and anatomical loss, or loss of use, of another extremity at a level or with complications preventing natural elbow or knee action with prosthesis in place. Also included was blindness of one eye with 5/200 (1.5/60) visual acuity or less, and blindness of the other eye having only light perception.

(2) "M(p)"—The anatomical loss, or loss of use, of one hand or one foot, and the anatomical loss of another extremity so near the shoulder or hip as to prevent the use of a prosthetic appliance. Also included was blindness of one eye having 5/200 (1.5/60) visual acuity or less, and anatomical loss, or blindness having no light perception accompanied by phthisis bulbi, evisceration, or other obvious deformity or disfigurement of the other eye.

(3) "M½"—The anatomical loss, or loss of use, of one extremity at a level or with complications preventing natural elbow or knee action with prosthesis in place, and the anatomical loss of another extremity so near the shoulder or hip as to prevent the use of a prosthetic appliance. Also included was blindness of one eye having light perception, and anatomical loss, or blindness having no light perception accompanied by phthisis bulbi, evisceration, or other obvious deformity or disfigurement of the other eye.

(4) "Additional 50%"—An additional half step of SMC was authorized if there was an additional service-connected disability independently ratable at 50 percent or more.

(5) "Additional 100%"—An additional full step was authorized if there was an additional service-connected disability independently ratable at 100 percent.

c. *Public Law 85-782, effective October 1, 1958,* created a level of SMC under subsection (r). One of the ways to establish basic entitlement under (r) was for the veteran to be entitled to the maximum rate under (p); i.e., (o). A question arises as to what constitutes the "maximum rate under (p)." For example, if a veteran was entitled to "N½" under (p), this rate was less than the maximum (o). However, if the veteran also had independent entitlement to SMC under (k); i.e., "N½+k," the rate payable exceeded the maximum under (p); i.e., (o). The question to be answered then was whether or not the SMC payable under (k) could be added to the rate payable under (p), in this example "N½," to establish basic entitlement to (r). The General Counsel, in an opinion dated June 18, 1959 (Op. G.C. 18-59), held that as (k) is not part of (p), the maximum rate under (p) was not being paid, and therefore the veteran did not have basic eligibility to (r), and should be paid (o).

However, this opinion was reversed by a General Counsel opinion dated June 13, 1963 (Op. G.C. 9-63), which held that any veteran entitled to the maximum dollar amount of compensation, (o) under any provision in 38 U.S.C. 314 met the basic eligibility criteria for subsection (r).

Op. G.C. 9-63 was interpreted to mean that any veteran who was entitled to the maximum rate, (o), under any of the provisions of 38 U.S.C. 314 was to be paid under subsection (r). This meant that veterans who were entitled to SMC rates "N+2k," "N+3k" and "N½+k," all of which exceeded the (o) rate, were to be paid SMC under (r). A review of the historical rate charts of SMC will reveal this to have been the practice.

This interpretation remained in effect until 1977. At that time it was determined that Op. G.C. 9-63 *did not* say that all veterans entitled to the maximum rate under (o) were also entitled automatically to the (r) rate, but simply held that basic eligibility to the (r) rate was established, and if the need for aid and attendance was demonstrated, the (r) rate could then be paid.

Accordingly, in conjunction with the adjustment necessitated by the rate increase mandated by Public Law 95-117 (effective October 1, 1977), writeouts were generated for each SMC code 15 or 28 ("N+3k" and "N½+k" respectively). These veterans were being paid the rate under (r), and were to be reviewed to determine whether or not the veteran required aid and attendance so as to continue the (r) rate.

A liberal interpretation was to be applied in making this determination, and no veteran was to be reduced from the (r) rate without first being reviewed by Central Office (211C).

Thereafter, entitlement to subsection (r) for any veterans receiving (o), or the maximum under (p), was to be based on whether or not a factual need for aid and attendance existed. This is the criterion currently in effect.

In making the determination of whether or not the veteran requires aid and attendance, it is allowable to base such need on one of the same disabilities which was used to establish entitlement under either (o) or the maximum rate under (p). For example, if the veteran has amputation of the left arm at the shoulder, and amputation of the right arm above the elbow, entitlement to SMC at the "N½" rate is established. If the veteran also has a separate condition rated at 50 percent, entitlement is established under (p) to (o). If it is shown that the veteran requires aid and attendance by reason of the bilateral amputations, rate the case under subsection (r) (SMC code 55).

As the veterans involved are by definition very seriously disabled, apply a liberal interpretation in determining the need for aid and attendance so as to establish entitlement under subsection (r).

d. *Public Law 89-311, effective December 1, 1965,* amended subsection (p) to include:

(1) "Blindness plus bilateral deafness." An additional full step of SMC was authorized if the veteran had service-connected blindness with 5/200 (1.5/60) visual acuity, or less, with bilateral deafness (with the hearing impairment of one or both ears service connected) rated at no less than 40 percent.

(2) "Blindness plus total deafness, one ear." An additional half step of SMC was authorized if the veteran had service-connected blindness with 5/200 visual acuity, or less, with service-connected "total deafness" in one ear. (See Adjudication, Transmittal Sheet 364.)

e. *Public Law 90-77, effective October 1, 1967,* changed the criterion restricting the concurrent payment of (s) and (k). Also changed was the prohibition against using an additional ratable disability to produce an intermediate rate (50 percent) under 38 U.S.C. 314(p), when the same disability had been used to establish entitlement under (k), was removed. (See Adjudication, Transmittal Sheet 415.)

f. *Public Law 95-479, effective October 1, 1978,* authorized an additional half step of SMC if the veteran had the anatomical loss, or loss of use, of *three extremities.* (See Adjudication, Transmittal Sheet 649.)

g. *Public Law 97-66, effective October 1, 1981,* which increased by one full step the levels of SMC payable for the bilateral loss, or loss of use, of both upper extremities, also established the following levels of SMC payable under (p) for the varying levels of loss, or loss of use, of the upper extremities. (See Adjudication, Transmittal Sheet 703.)

(1) "M½"—Anatomical loss, or loss of use, of one hand with anatomical loss, or loss of use, of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place. (Previously L½.)

(2) "N"—Anatomical loss, or loss of use, of one hand with anatomical loss of one arm so near the shoulder as to prevent the use of a prosthetic appliance. (Previously M.)

(3) "N½"—Anatomical loss, or loss of use, of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, with anatomical loss of one arm so near the shoulder as to prevent the use of a prosthetic appliance. (Previously M½.)

h. *Public Law 97-306, effective October 1, 1982,* amended subsection (p) to include either an additional half step or a full step of SMC for blinded veterans in conjunction with loss, or loss of use, of one hand or one foot. (See Adjudication, Transmittal Sheet 721, and par. 50.62f.)

(1) Bilateral blindness rated at 5/200 (1.5/60) visual acuity, or less, with loss or loss, of use of one hand, entitled the veteran to a full step of SMC.

(2) Bilateral blindness rated at 5/200 (1.5/60) visual acuity, or less, with loss, or loss of use, of one foot which by itself, or in combination with another compensable disability, would be ratable at 50 percent, or more, entitles the veteran to a full step of SMC.

(3) Bilateral blindness rated at 5/200 (1.5/60) visual acuity, or less, with loss, or loss of use, of one foot which is ratable at less than 50 percent, and which is the only compensable disability other than bilateral blindness, entitles the veteran to a half step of SMC.

(4) As this law also equated blindness with no light perception to enucleation, the corresponding levels of SMC under (p) for bilateral blindness (one of the eyes with no light perception) also increased; i.e., 5/200 & NLP = M, LPO & NLP = M½. The previous requirement that no light perception be accompanied by phthisis bulbi, evisceration, or other obvious deformity or disfigurement was removed.

i. *Public Law 98-223, effective October 1, 1983,* amended subsection (p) for bilateral blindness and deafness.

(1) An additional full step of SMC was authorized for service-connected blindness of 5/200 (1.5/60), or less, with bilateral deafness (with the hearing impairment in one or both ears service connected) rated at no less than *30 percent.* Previously, to be entitled to an additional full step a 40 percent hearing, impairment was required (Public Law 89-311).

(2) An additional half step of SMC was authorized for blindness, having only light perception, or less, with bilateral deafness (and the hearing impairment in either one or both ears service connected) rated at 10 or 20 percent.

(3) Veterans with bilateral blindness of better than LPO in either eye, plus total service-connected hearing loss in one ear remained entitled to an additional half step of SMC. However, those veterans with bilateral blindness, having only light perception, or less, plus total service-connected hearing loss in one ear, became entitled under (o) by this law. (See par. 5 under 38 U.S.C. 314(o).)

8. Title 38 U.S.C. 314(q)

a. *Public Law 82-427, effective August 1, 1952,* established a minimum level of SMC payable ($67) for veterans whose tuberculosis disease had reached a condition of complete arrest.

b. *Public Law 90-493, effective August 19, 1968,* repealed subsection(q), except for those veterans who on August 19, 1968, were receiving, or entitled to receive, compensation for tuberculosis. (See Adjudication, Transmittal Sheet 429.)

9. Title 38 U.S.C. 314(r)

a. *Public Law 85-782, effective October 1, 1958,* created a new level of SMC under subsection (r).

(1) Entitlement under (r) was established if the veteran was entitled to the maximum rate under either (o) or (p), plus was in need of regular aid and attendance. Entitlement under (r) was to continue only while not hospitalized at government expense.

(2) If the need for aid and attendance was one of the conditions establishing entitlement under either (o) or (p), the additional benefit under (r) was still to be paid.

b. *Public Law 95-479, effective October 1, 1978,* added a new subsection, (r)(2), and redesignated the existing (r) described above in paragraph 1 as (r)(1).

(1) If a veteran in receipt of (r)(1) was entitled to a "higher level of care," entitlement was established under the new (r)(2). (See Adjudication, Transmittal Sheet 649.)

(2) Awards of compensation, including (r)(2), were also subject to reduction while hospitalized at government expense.

c. *Public Law 96-128, effective October 1, 1979,* amended the eligibility criteria for both (r)(1) and (r)(2) to include veterans rated at 100 percent plus "N½ + K," who are in need of regular aid and attendance (r)(1), or are in need of regular aid and attendance plus have need of a higher level of care (r)(2). (See Adjudication, Transmittal Sheet 669.)

10. Title 38 U.S.C. 314(s)

a. *Public Law 86-663, effective September 1, 1960,* established a new level of SMC under subsection (s).

(1) Entitlement under (s) was established with a total (100 percent) disability and (a) an additional service-connected disability or disabilities independently ratable at 60 percent, or more, or (b) by reason of the service-connected disability or disabilities is permanently housebound.

(2) If the 60 percent disability also established entitlement under (k), payment was to be at the rate of 100 percent plus (k), as this was a greater benefit than 100 percent plus (s). Also, SMC under (k) was not payable in addition to (s).

b. *Public Law 90-77, effective October 1, 1967,* amended the above to allow for the payment of (k) in addition to (s). (See Adjudication, Transmittal Sheet 407.)

11. Title 38 U.S.C. 314(t)

[a.] *Public Law 95-479, effective October 1, 1978,* established a new level of SMC under (t). To be entitled to (t), the veteran must be rated less than 100 percent and entitled to receive SMC under (k) for the loss, or loss of use, of an extremity rated 40 percent or more disabling. Entitlement under (t) is established if the veteran meets the above criteria, plus has the loss, or loss of use, of the paired extremity as a result of a nonservice-connected disability, not the result of the veteran's own willful misconduct, that would be rated, if service connected, at 40 percent or more. (See Adjudication, Transmittal Sheet 649.)

[b. *Public Law 99-576, effective October 28, 1986,* repealed subsection (t). The nonservice-connected disability is to be considered as if service connected under 38 CFR 3.383.]

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CHAPTER 51. THE DENTAL RATING

51.01 GENERAL

Claims are normally referred to Adjudication on VA Form 10-7131, Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action (for handling of this form prior to and after rating board action, see par. 30.03), but at times a veteran seeks treatment for a noncompensable dental condition on VA Form 21-526, Veteran's Application for Compensation or Pension. This latter type claim will be referred to the outpatient clinic for proper disposition. (See par. 21.01e.)

51.02 RATING BOARD RESPONSIBILITIES

Normally dental treatment claims will be handled by the outpatient clinic without referral to Adjudication and the rating board; however, rating board action is required in:

a. Claims for service-connected compensable dental disabilities or conditions. (See par. 51.06b.)

b. Claims for service-connected noncompensable dental disabilities or conditions resulting from combat wounds or service trauma. (See par. 51.07e(2).)

c. Claims for service-connected noncompensable disabilities by a prisoner of war. (See par. 51.07g(2).)

d. Claims under [38 CFR 17.123a] for teeth extracted in service when the exercise of professional judgment cannot establish that a tooth was extracted or lost in service. (See pars. 51.05c and 51.07e(3).)

[ ]

51.03 SERVICE RECORDS

Generally, service records will be used for rating dental disabilities without a VA examination, but see paragraph 51.04 when an examination may be necessary.

a. **Navy.** Copies of dental records have not always been usable for rating purposes because prior to 1953 different colored markings on the original Naval records represented either disease or fillings and these markings cannot be distinguished on photocopies. (See par. 30.03.) The record of subsequent dental operations on the bottom of Navy Form H-4, Navy Dental Records (Examination), will be accepted as sufficient to authorize service connection even though the reverse side of that form may not record the insertion of fillings.

b. **Army.** Army regulations require that every individual entering active service for more than 60 days will have an initial dental examination within 60 days of entry into active service. In the absence of a suitable enlistment examination (e.g., the only notation is indefinite, such as "acceptable," "nondisqualifying," or "not examined"), the first examination within a reasonable period after entrance on active duty will be accepted as indicating the missing or defective teeth at enlistment. Facts in individual cases, as when the first examination report is more than 90 days after enlistment, may warrant an exception to this general rule.

c. **Numbering Teeth.** Teeth numbering by the VA and service departments differed in the past, but since 1953 they have been the same. Listed below are the current VA and past service numbering systems:

Upper

	Right								Left							
VA	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
ARMY (WWI)	8	7	6	5	4	3	2	1	1	2	3	4	5	6	7	8
ARMY (WWII)	8	7	6	5	4	3	2	1	1	2	3	4	5	6	7	8
NAVY	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

Lower

	Right								Left							
VA	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17
ARMY (WWI)	8	7	6	5	4	3	2	1	1	2	3	4	5	6	7	8
ARMY (WWII)	16	15	14	13	12	11	10	9	9	10	11	12	13	14	15	16
NAVY	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32

The Coast Guard and Public Health Service have numbered teeth the same as the VA.

51.04 VA DENTAL EXAMINATION

Generally a dental claim will be rated on service records without a VA examination, whether mentioned in conjunction with other disabilities on VA Forms 21-526 or 10-7131. An examination may be required to confirm chronic periodontal disease diagnosed in service (see [38 CFR 3.382(c)], when a compensable evaluation may be in order or to identify the teeth for which service connection is claimed or is to be determined.

51.05 DENTAL RATING PRINCIPLES

a. **General.** Dental ratings will not differentiate between carious and missing teeth nor will they show only the conditions which are considered as requiring correction at the time of the latest dental examination. They will indicate by number each tooth for which service connection is established. If a veteran has two periods of service and during the second period of service incurs a new condition in the same tooth or aggravation of a dental condition, previously granted service connection on the basis of the first period of service, the rating must show the incurrence of such new condition or the aggravation of the preexisting condition in the second period of service in order not to defeat the veteran's entitlement to treatment based on the subsequent service.

b. **Caries.** If a tooth is noted as normal on the induction examination and if after [6 months] of military service that tooth is noted as carious, service connection will be granted.

c. **Extractions.** If a tooth other than a third molar or "wisdom tooth" is noted as normal on the induction examination and if after 6 months of military service that tooth is recorded as having been extracted during service, service connection will be granted.

(1) Ratings for extracted teeth under [38 CFR 17.123a] will take into account any incomplete condition of the service records.

(2) Accordingly, unless contradictory evidence is of record, service connection for teeth extracted in service will be conceded in such cases if the veteran states teeth were extracted in service and furnished dates (month and year) and places of treatment consistent with his/her period of service ([38 CFR 3.382(b)]). (See also par. 51.07e(3) re rating sheet entries.)

(3) Service connection will not be granted a third molar or "wisdom tooth" extracted in service.

d. **Missing Teeth.** Teeth noted as missing at time of entry into service or within a reasonable length of time after induction, replaced during service by a denture or fixed bridge, will not be service connected.

e. **Aggravation**

(1) If a tooth is noted as carious on the induction examination and there is a record of only one treatment during service, service connection will not be granted, notwithstanding enlargement of the original cavity or development of additional cavitation on the same or another surface. The first treatment provided for that particular tooth will be considered as treatment for a condition that existed at induction. If a tooth noted as carious (restorable) at induction is extracted after a reasonable period of service, service connection by aggravation will be granted.

(2) If a second treatment is provided for a tooth noted carious at induction after expiration of a reasonable period of time after the first treatment, service connection will be granted that tooth on the premise that the tooth has developed new caries.

(3) Service connection will be granted for a tooth in which a preservice filling becomes defective after a reasonable period of service. However, the mere repair of a removable dental prosthesis during service is not a proper basis for service connection.

(4) Service connection is not warranted for a partial denture, full denture, or a fixed bridge when replacing nonservice-connected teeth even though broken, damaged, stolen or lost in service.

f. **Malposed or Impacted Teeth.** Service connection is not warranted for teeth extracted during service because of being malposed or impacted. A malposed tooth with pathology may be service connected if first *noted* after a reasonable period of time after entry into service.

g. **[Nonrestorable] at Time of Enlistment.** Service connection is not warranted for any tooth noted as nonrestorable at time of entry into service or within a reasonable time after entry into service, no matter when it was extracted during service.

h. **Abutment Teeth.** Teeth used as abutments in replacing service-connected teeth will not be service connected, unless they were actually shown to have been carious prior to or subsequent to the replacement of the missing teeth during service, or dental opinion at the time of reexamination reflects complications to the abutment teeth as a direct result of treatment related to the service-connected condition.

i. **[Gingivitis.** Gingivitis is not considered a disease entity and is not ratable.

j. **Vincent's Stomatitis.** Vincent's Stomatitis (trenchmouth) with infrequent episodes of short duration shown in service records should be considered to be acute and transitory and may not be service connected.

k.] **Calculus.** Salivary deposits (calculus) is not a ratable condition.

[l.] **Deciduous Teeth.** Deciduous or baby teeth will not be service connected although treated or extracted during service, unless it is shown or documented that there was no permanent tooth formed as its replacement; then, loss of the retained deciduous tooth (during service) will be considered service connected for the permanent tooth number which normally would have replaced it.

51.06 THE RATING DECISION

a. **Noncompensable Dental Ratings.** All noncompensable dental ratings will be made on VA Form 21-564d, Dental Rating Sheet, in duplicate. For handling of dental treatment claims made on VA Form 21-526 see paragraph 21.01e.

b. **Compensable Dental Ratings.** Compensable ratings for dental disabilities will be made on VA Form 21-6796, Rating Decision, prepared in accordance with the provisions of chapter 49. When dental and nondental disabilities are covered in the same rating decision, a dental and a medical rating specialist will participate with the legal and occupational specialists in the decision.

51.07 PREPARATION OF DENTAL RATINGS (VA FORM 21-564d)

The Dental Rating Sheet (VA Form 21-564d) will be prepared in longhand. Since this form is not for entry, all items will be completed by the rating specialists. This form will be prepared in duplicate and the copy forwarded to the outpatient clinic. Signatures of three rating specialists are required, one of which must be medical or dental.

a. General. All dental examinations and records of treatment will be entered in proper sequence according to dates, using the appropriate codes shown on the rating sheet and utilizing the VA numbering system (par. 51.03c).

b. Dental Examination Upon Entering Service. The condition at entry into service will be recorded by placing an "X" over the number of a missing tooth, and "O" around the number of a restorable carious tooth and a "/" through the number of a nonrestorable carious tooth.

c. Subsequent Examinations and/or Treatments. Subsequent examinations will be recorded as described in subparagraph b above. Treatment will be indicated by posting an "F" below the number of a tooth filled and an "E" below the number of a tooth extracted.

d. Discharge and VA Dental Examinations. These will be recorded as described in subparagraph b above.

e. Rating Code 1—Incurred or Aggravated in Service. Teeth or pathological conditions determined to be service connected will be identified as being due to wartime (38 U.S.C. 310) or peacetime (38 U.S.C. 331) service and listed in the appropriate item of VA Form 21-564d.

(1) Teeth determined to be service connected will be identified by tooth number.

(2) Those teeth service connected because of combat or trauma will be identified by tooth number in the appropriate combat or trauma item.

(3) If service connection for missing teeth is conceded (see par. 51.05c), the affected tooth number(s) will be included in the appropriate wartime or peacetime items and "Remarks" will be completed to show: "SC conceded for tooth number(s) _____ claimed as extracted in service."

(4) Service-connected pathological dental conditions such as dentoalveolar abscess, pyorrhea or chronic Vincent's stomatitis, will be entered in the appropriate pathological condition item.

f. Rating Code 8—Not Service Connected or Aggravated. When service connection is not in order for any dental condition, code 8 will be used. When the evidence establishes service connection for a dental condition or conditions, it is not required that code 8 reflect other missing or defective teeth or other dental involvement or abnormality not shown to be incurred in or aggravated by service. The obvious absence of a finding of service connection on their account will serve as a guide to the dental clinic in determining entitlement on the basis of the rating decision.

g. Remarks

(1) When combat or service trauma is claimed, but ~~enlistment~~ entitlement is [not] shown, "No combat" or "No service trauma," as appropriate, will be entered.

(2) Whenever the evidence indicates that the veteran was a prisoner of war, the legend "POW" will be used in the "Remarks" block as this status provides entitlement to subsequent treatment for all service-connected dental conditions whether the result of POW experiences or not. No attempt will be made to determine the dental disabilities attributable to the POW experience.

(3) If dental ratings have previously been prepared and these determinations were not included in the rating decision, the Director, Dental Clinic, may request supplemental ratings to enable that office to make determinations of eligibility. In such instances, it will be necessary that only the veteran's name, VA file number, and date of rating be shown in the respective items of the form and the appropriate legend be entered in "Remarks."

51.08 SUBSEQUENT RATINGS

On reopened claims and claims initially rated on incomplete service records, when service connection is subsequently allowed, only the factors pertinent to the issue will be reflected on VA Form 21-564d, thereby avoiding repetition of the items on the previous rating referring to notations at enlistment and discharge. An explanation for the additional grant of service connection will be included in "Remarks."

51.09 SEVERANCE OF SERVICE CONNECTION

Service connection, once granted, even by way of a memorandum rating, can be severed only by strict compliance with the provisions of [38 CFR 3.105(a).]

51.10 NOTICE OF DISAGREEMENT

See paragraph 30.03j.

CHAPTER 52. REDUCTION IN RATINGS

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CHAPTER 52. REDUCTION IN RATINGS

52.01 GENERAL

a. **Recitation of Facts Supporting the Reduction.** When a rating is reduced, it is of the utmost importance that the narrative summary of facts succinctly set forth the basis for the action. The facts should cite symptoms and the findings from the current examination establishing improvement in the condition(s). In psychiatric cases, social and economic adjustments should be outlined along with the other evidence warranting the reduced evaluation.

b. **Adequate Examination Required.** An examination which is not as thorough with respect to the disability(ies) in issue as the examination on which the current rating was based or continued, will not be used as a basis for reduction. (See also par. 52.07.)

c. **Protection Under [38 CFR 3.951 and 3.952.]** Care must be exercised so as not to violate the protective provisions of [38 CFR 3.951 and 3.952]; therefore, all previous ratings will be reviewed prior to preparation of a new decision. In all cases the 20-year period of [38 CFR 3.951] will be measured from the earliest concurrent effective date of the total rating or individual evaluations(s) and the receipt of benefits based on that rating. For purposes of determining whether benefits were received for a concurrent period of 20 or more years, periods during which recoupment or deduction applied to an award will be included.

(1) **Total Disability Rating.** A total disability rating, either schedular or based on individual unemployability, which has been continuously rated and where the veteran concurrently has been in receipt of benefits for 20 or more years will not be reduced except on a showing of fraud.

(2) **[Individual] Disability Evaluations.** An evaluation which has been continuously rated at or above the current level and where the veteran concurrently has been in receipt of benefits for 20 or more years will not be reduced except on a showing of fraud.

(3) **[Combined Evaluations.** A case in which both a combined evaluation and an award of benefits has been in effect for 20 or more years will not be reduced except in a case of fraud. For example, when two compensable service-connected disabilities have been evaluated as 30 percent and 20 percent disabling, respectively, and an improperly assigned combined degree of 50 percent has been in effect for 20 or more years, no rating action is warranted to reduce the erroneous 50 percent combined degree to the proper 40 percent combined degree as both the individual evaluations and the combined evaluation are protected (38 CFR 3.951).

(4)] **Effect of Hospital Adjustments**

(a) An adjustment to a hospital rate under [38 CFR 3.552 or 3.557] will not be considered as an interruption of the required 20-year period under [38 CFR 3.951].

(b) The 20-year protection of a total rating or disability evaluation(s) will not preclude a reduction to a hospital rate under [38 CFR 3.552] or discontinuance of compensation under [38 CFR 3.557.

(5)] **The 1925 Rating Schedule.** Ratings under the 1925 Rating Schedule which were the basis of compensation on April 1, 1946, are protected by [38 CFR 3.952] subject to the provisions of [38 CFR 3.552 and 3.557.]

52.02 RATINGS UNDER [38 CFR 3.105(e)]

a. **Preparation of the Rating**

(1) **Application of [38 CFR 3.105(e).]** When reconsideration of a case by the rating board necessitates reduction or termination of a running compensation award by reason of a change in the veteran's service-connected disability(ies) or employability status, the rating will be prepared to reflect the lower evaluation as a *future* change effective the 1st

day of the month following the expiration of the 60-day period of notice to the veteran of the reduction in payments. The legend ["38 CFR 3.105(e)"] will be entered on the rating sheet in accordance with paragraph 49.17c to insure proper and prompt disposition of this action.

(2) **Application of [38 CFR 3.105(a) With 38 CFR 3.105(e).]** When the reduction in evaluation of a service-connected disability or employability status in warranted because of administrative error or error in judgment, the legend ["38 CFR 3.105(a) and 38 CFR 3.105(e)] will be entered on the rating sheet. [38 CFR 3.105(a), 3.500(b)(2), and 3.501(e)(2) and (g)(2).)]

(3) **Reduction in Prestabilization Ratings.** See paragraph 53.01e.

b. **Expedited Action.** Since a current award will be required with a future date reduction in evaluation corresponding to the effective date assigned by the rating, expedited action must be taken on referral to Authorization to insure that notice is sent to the veteran in the month the rating and award are signed and that reduction is effected the 1st of the month following the month in which the 60-day notice to the veteran expires. (Par. 24.03c.)

52.03 COMBINED REDUCTION–NEW COMPENSABLE DISABILITY

a. **Rating Procedure.** When a reduction in a running compensation award is in order based on the findings of a current VA examination and an additional compensable service-connected condition is recognized but the combined evaluation results in a reduction, the reduced evaluation for the original disease or injury and the compensable evaluation for the new disability will be made effective the 1st day of the month following expiration of the 60-day period of notice to the veteran of the reduction in payments. This does not preclude the assignment, when in order in the exceptional case, of a retroactive evaluation from an earlier date, on account of the newly diagnosed disease or injury when the evidence definitely and convincingly demonstrates the existence of a compensable degree of disability over the retroactive period involved.

b. **Award Action.** The effective dates of the award will correspond to the effective dates established on the rating. (See par. 24.03)

52.04 COMBINED REDUCTION–INCREASED EVALUATION OF OTHER DISABILITY(IES)

If assignment of decreased and increased evaluations for different disabilities results in a decreased combined rating, a temporary increase will not be authorized. The provisions of [38 CFR 3.105(e)] will be applied to the new evaluations for all disabilities, both improved and unimproved, effective the 1st day of the month following expiration of the 60-day period of notice to the veteran of the reduction in payments. Similarly, no temporary increase is in order in a claim for an increase when the submitted evidence shows increased evaluation(s) for the claimed disability(ies), but as the result of a reexamination, a reduction of a different disability(ies) results in a combined decrease.

52.05 COMBINED UNCHANGED–INCREASE OF OTHER DISABILITY(IES)

When a routine examination is scheduled or there is a claim for increase as to any disability(ies) and examination establishes the claimed increase, but the findings also require a decrease in another disability resulting in no change in the combined evaluation, the provisions of [38 CFR 3.105(e)] are not applicable. The proper rating procedure would show the increased evaluation for the disability(ies) involved from the date of examination and decreased evaluation for the improved condition(s) effective the same date.

52.06 COMBINED INCREASE–REDUCTION OF ONE DISABILITY

When a current examination reflects improvement of one service-connected disability and an increase in severity as to another service-connected disability which results in an increase in the combined evaluation, the provisions of [38 CFR 3.105(e)] are not applicable. The case will be adjudicated on the basis of the new combined evaluation and the increased compensation benefits authorized effective as of the earliest date the evidence establishes the increase in the

degree of disability if the claim is received within 1 year from such date, but not prior to August 1, 1975, otherwise the date of claim for increase, provided that the evidence shows entitlement as of that date. (38 U.S.C. 3010(b) and [38 CFR 3.400(O)]).

52.07 NEW EVIDENCE JUSTIFIES REEXAMINATION

a. **Receipt of New Evidence.** When evidence, medical or otherwise, received prior to the expiration of the [38 CFR 3.105(e)] 60-day notice period, establishes a reasonable basis for reexamination, the rating board will authorize reexamination and prepare a rating restoring the previous evaluation(s). The case will be promptly referred to the Authorization activity for preparation and processing of an award restoring and continuing the rate of payment previously authorized pending the outcome of the new examination. (See par. 24.03d.)

b. **Rerating.** When the report of reexamination is received, the case will be rerated based on all of the evidence of record as though the first examination had not been used for rating purposes. If a reduction in evaluation is in order, [38 CFR 3.105(e)] will be applicable again, subject to the provisions of paragraphs 52.03 through 52.06.

52.08 INAPPLICABILITY OF [38 CFR 3.105(e)]

a. **No Running Award.** [38 CFR 3.105(e) is for application only when a lower evaluation of a service-connected disability would result in a reduction or discontinuance of compensation payments in a running award. Therefore, when a case is in suspense, [38 CFR 3.105(e)] is not for application and reduction or discontinuance will be made in accordance with the facts found under the authority of [38 CFR 3.500(a),] but a reduction or discontinuance based on a rating action will not be prior to the date of last payment [(38 CFR 3.105 and 3.655(d)).]

[b.] **Allowance for Regular Aid and Attendance.** See paragraph 25.19.

52.09 SEVERANCE OF SERVICE CONNECTION INVOLVED

When service connection has been in force for 10 years or more, computed from the date the status commenced and not the date of rating, severance action will not be contemplated, except for fraud, lack of requisite service or character of discharge [(38 CFR 3.957).] If the 10-year period has not passed and it is proposed to sever service connection for a condition in which improvement has been shown, rating action will be accomplished in accordance with the provisions of chapter 48. [38 CFR 3.105(e)] will be applied [if the evaluation of] a disability other than the one for which severance is proposed [requires discontinuance or reduction.]

52.10 APPELLATE PROCEDURES

a. **General.** If a notice of disagreement is filed during the 60-day notice period, the statement of the case will be prepared by the rating board and a copy furnished the veteran without waiting for the expiration of the 60-day period. If the veteran or authorized representative files a substantive appeal, proper action will be taken to certify an appeal as provided in paragraph 18.23, if in order. In the event a hearing before a rating board is desired, it will be held.

b. **New Evidence.** If new evidence is received, the rating board will either confirm, modify or cancel the earlier action. If the earlier decision is either confirmed or modified in part, a supplemental statement of the case will be prepared. (Pars. 18.10 and 18.25b.)

52.11 REDUCTION UNDER PARAGRAPHS 28, 29, AND 30, RATING SCHEDULE

See chapter 53.

52.12 REDUCTION OF SERVICE-CONNECTED TOTAL DISABILITY

a. **General.** Service-connected total disability ratings other than those established under the provisions of paragraphs 28, 29 or 30 of the Rating Schedule and which are not protected under [38 CFR 3.951 or 3.952] may be reduced only in accordance with the provisions of [38 CFR 3.343.]

b. **Reduction of Schedular 100 Percent Ratings**

(1) [If the rating board proposes to reduce a veteran's total schedular evaluation (for a disability other than a nervous condition) to a level meeting the individual unemployability requirements of paragraph 18 of the Schedule for Rating Disabilities, Authorization Activity shall send the veteran a VA Form 21-8940, Veterans Application for Increased Compensation Based on Unemployability. Authorization Activity shall tell the veteran the form can be used to apply for a 100 percent evaluation based on individual unemployability.]

(2) If evidence is submitted establishing individual unemployability due to service-connected disabilities, a [disability] rating will be prepared granting the total rating because of individual unemployability. The effective date will be the earliest date the evidence shows individual unemployability if a claim is received within 1 year from such date, but not prior to August 1, 1975, otherwise the date of claim, provided that the evidence shows entitlement as of that date. [(See 38 CFR 3.400(o).)]

(3) If evidence is submitted establishing individual unemployability, but because of the reduced evaluations the percentage requirements of paragraph 16 of the Rating Schedule are not met, the claims folder should be referred to Central Office (212A) for consideration under [38 CFR 3.321.]

c. **Employability Regained**

(1) When evidence of substantially gainful employment is indicated but not clearly shown, the case will be referred to the Authorization activity to develop for individual unemployability per subparagraph b(1) above.

(2) When substantially gainful employment is established, rating action as outlined in paragraph 52.02 will be followed.

52.13 PENSION CASES—RATING UNDER [38 CFR 3.105(f)]

a. **Termination.** Subject to the protection afforded under [38 CFR 3.951,] when evidence shows that the veteran is no longer entitled to pension either because of recorded medical improvement or because unemployability is no longer shown, the veteran will be rated "NOT PT" under rating code 9 effective the date of examination showing improvement or the date the evidence shows regained employab y. (See app. A.)

(1) The [disability] rating (not for entry will be prepared with the legend [38 CFR 3.105(f)] entered in accordance with paragraph 49.17c.

(2) The rating will be referred to the Authorization activity for termination. Thirty days after the claimant has been notified of the proposed decision, payments will be reduced or terminated the first of the month following the month in which termination action is authorized [(38 CFR 3.501(e)(1) and (g)(1)). (See par. 14.36 concerning application of the due process provisions and predetermination notice.)]

(3) In case of serious illness or psychiatric disability, the rating board should not be hasty in deciding that employability has been regained. It is important that there be demonstrated ability to hold employment as well as obtain it. An untimely decision that employability [was] regained could result in early loss of pension when continued ability to remain gainfully employed has not been shown.

(4) The income limitations and annual income questionnaire are deemed adequate controls in pension cases until rehabilitation and employability are established.

b. **Change to Compensation.** As provided in paragraph 29.04, if the veteran is also entitled to compensation (which was payable at a rate less than pension), the award will be amended to authorize compensation as the greater benefit. The disability rating will be prepared under the legend "38 CFR 3.105f," establishing the proper evaluation for compensation and terminating entitlement to pension under rating code 9. (See par. 49.12 re "Employability" coding.)

52.14 FAILURE TO REPORT FOR EXAMINATION

When, in connection with a running compensation or pension award, a veteran without adequate reason fails to report for VA examination or scheduled VA hospitalization for observation and examination, the claims folder will be referred to the rating board for review of static disabilities. Static disabilities include disabilities protected under 38 CFR 3.951 and 3.952 (see par. 52.01c) and those for which no examination was scheduled or will be scheduled. (38 CFR 3.655)

[a. **Initial Action.** If a veteran fails to report for a scheduled VA examination, the rating board will prepare a handwritten "Failure to Report" rating using VA Form 21-6789, Deferred or Confirmed Rating Decision. Strike through item 9 on VA Form 21-6789 and write in block letters "FAILURE TO REPORT". If the veteran has no static or protected disabilities, annotate the failure to report rating "No Static Disabilities or Protected Evaluations". If the veteran has static disabilities or protected evaluations, list the diagnostic code and evaluation, for each such disability and the new combined evaluation. You need not list prior noncompensable service-connected disabilities on this rating unless they are used to grant a 10-percent rating under 38 CFR 3.324. Do not enter an effective date. This rating shall be signed by the same number of rating specialists as a formal rating decision.

b. **Veteran Fails to Respond.** If the veteran fails to respond to the predetermination notice provided under paragraph 24.08, authorization will reduce the veteran's benefits. After the award has been processed and the veteran has been informed of the action taken, the rating board will prepare a supplemental formal rating. Use the effective date award was reduced as the effective date of the new combined evaluation based on static and/or protected disabilities.]

c. **Prestabilization Ratings.** See paragraph 53.01f.

[d. **Pension Cases.** If the veteran does not continue to be permanently and totally disabled, the rating board will prepare a "Failure to Report" rating as required in paragraph a above. If the veteran remains permanently and totally disabled, prepare a supplemental disability rating showing the disabilities for which the examination was scheduled at their static level. After the rating is prepared, refer the claims folder and rating to authorization for appropriate award action.]

CHAPTER 53. PRESTABILIZATION, HOSPITALIZATION EXCEEDING 21 DAYS AND TEMPORARY SURGICAL RATINGS

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53.01 VA Form 21-6796, Rating Decision (Total Disability Because of Hospitalization) 53-7

CHAPTER 53. PRESTABILIZATION, HOSPITALIZATION EXCEEDING 21 DAYS AND TEMPORARY SURGICAL RATINGS

NOTE: Paragraphs 28, 29 and 30 (38 CFR 4.28, 4.29, and 4.30) when used in this chapter refer to the same numbered paragraphs in the Schedule for Rating Disabilities. Procedure for furnishing and securing notices and reports to and from hospitals for purposes of paragraphs 29 and 30 is contained in chapter 25, subchapter IV.

53.01 PARAGRAPH 28—PRESTABILIZATION RATINGS

Ratings under this paragraph are provided to assure earliest payment to those veterans most likely to be in need and least likely to be self-sufficient. When warranted, these ratings should not be deferred for completion of development procedures, or waiting for a VA examination or for additional service records.

a. **Applicability.** When a claim is filed within 6 months from the date of separation and service medical records show existence of an unstabilized condition from any disease or injury for which service connection may be granted, a prestabilization rating of 100 percent or 50 percent may be assigned under paragraph 28. A prestabilization rating will not be precluded solely because a VA examination was conducted prior to the initial rating.

(1) If a veteran has substantial service-connected disability which will continue for an indefinite period, apply paragraph 28 without delay and do not perform any further development or defer for examination.

(2) If there is an indication of entitlement to special monthly compensation, but records are insufficient to make a full determination, the rating board shall grant the loss level which is shown and request an "at once" examination to determine the full permanent loss. (See subpar. d below.)

b. **When Not Applicable**

(1) A total 100 percent prestabilization rating will not be assigned in any case in which:

(a) A total rating is immediately assignable under the regular provisions of the schedule or on the basis of individual unemployability.

(b) Entitlement under 38 U.S.C. 314(1) through (s) is shown.

(2) A 50 percent prestabilization rating will not be assigned in any case in which an evaluation of at least 50 percent but less than 100 percent is immediately assignable under the regular provisions of the schedule.

c. **Duration.** Ratings under paragraph 28 will be prepared as "open-end ratings." However, this entitlement should only continue through the end of the 12th month following discharge or to the end of the period provided under 38 CFR 3.105(e), whichever is later.

d. **The Rating**

(1) All disabilities noted or claimed will be disposed of in accordance with paragraph 46.02, but when the rating board can grant a prestabilization rating, a rating under paragraph 28 will not be deferred for any development to determine service connection for other disabilities. The rating will include any entitlement under special monthly compensation codes 01, 02, or 14.

(2) VA Form 21-6796, Rating Decision, will completed by the rating specialist as required by paragraph 49.05b.

(3) Following the rating code and period of service, the rating format will be:

(a) The diagnostic code for the most severe condition followed on the same line with the diagnosis of the disease, injury or residuals.

(b) The remaining conditions claimed by the veteran and/or shown by the service records will be listed in column(s), without assigning diagnostic codes.

(c) The appropriate 50 or 100 percent evaluation and effective date.

(d) Disability rating code "17. Prestabilization rating from (date following discharge)."

(e) Special monthly compensation paragraph phrases, if applicable.

EXAMPLE: Paragraph 28 Rating

1. SC (VE INC)

5255 Compound comminuted fracture of left femur, intertrochanteric region as secondary to gunshot wound to left thigh.

GSW, left arm
GSW, chest
Nervous disorder

100% from 4/1/70

17. Prestabilization rating from 4-1-70.

(4) A future date control will be established to provide for a VA examination covering all service-connected conditions, as of a date not earlier than 6 months after service discharge nor later than 9 months following discharge. The completed examination report should be received by the rating board so that rating reconsideration for an initial *schedular* evaluation may be accomplished during the 10th month following service discharge.

e. **Application of 38 CFR 3.105(e).** When a VA examination as provided by subparagraph d(4) shows a combined residual disability of less than the 50 or 100 percent evaluation granted under paragraph 28, reduction under the provisions of 38 CFR 3.105 (e) will be effective as of the 1st day of the month following expiration of the 60-day period of notice to the veteran or the 1st day of the month following the 12th month after discharge, whichever is later; however, rating action and notice of reduction should be accomplished promptly and will not be deferred until the expiration of the 12-month period following discharge.

[f. **Failure to Report for Examination.** A veteran who without adequate reason fails to report for the VA examination scheduled in a 38 CFR 4.28 case is subject to adjustment of benefits.

(1) Prepare a handwritten "Failure to Report" rating under the provisions under 38 CFR 3.655(b) and M21-1 paragraph 24.08. Use VA Form 21-6789, Deferred or Confirmed Rating Decision. Strike through item 9 on VA Form 21-6789 and write in block letters "FAILURE TO REPORT". List the diagnostic code and evaluation for each service connected disability and the new combined evaluation. Do not enter an effective date. This rating shall be signed by the same number of rating specialists as a formal rating decision.

(2) Assign the minimum compensable evaluation for each service connected disability for which the evidence clearly establishes permanent residual disability. A noncompensable evaluation will be assigned for all other service connected disabilities. If the available evidence is not sufficient for determination of a compensable level of static disability for any service connected disability, assign a noncompensable evaluation for each such disability.

(3) If the veteran fails to respond to the predetermination notice provided under paragraph 24.08, authorization will reduce the veteran's benefits. After the award has been processed and the veteran has been informed of the action taken, the rating board will prepare a supplemental formal rating. Use the effective date the award was reduced as the effective date of the new combined evaluation based on static disabilities.]

53.02 PARAGRAPH 29 - HOSPITALIZATION RATINGS

a. **When Applicable.** Total ratings provided by paragraph 29 are applicable to periods of hospitalization in excess of 21 days for a service-connected disability, including those acquired under 38 U.S.C. 351, PROVIDED a total (100 percent) rating cannot be assigned under the provisions of the [Schedule for Rating Disabilities. (See par. 25.24d.)]

b. **Increase Effective Date of Hospital Admission.** The total evaluation will be made effective the date of hospital admission for:

(1) All VA hospitalizations.

(2) Non-VA hospitalizations when authorized by the VA on or before the date of admission.

(3) Unauthorized non-VA hospitalization if service connected at time of admission and claim for increase is received within 1 year of date of admission (but an effective date earlier than date of claim may not be prior to August 1, 1975).

(4) Unauthorized non-VA hospitalization if there is a claim in a pending status. [(See 38 CFR 3.156(a) and 3.160(c).)]

c. **Increase Effective Subsequent to Date of Hospital Admission.** When non-VA hospitalization notice is received by the VA more than 1 year after the date of admission, the effective date will be the date of claim ([38 CFR 3.157]). In such cases, first consideration should be given to schedular total [evaluation].

d. **When Not Applicable.** The provisions of paragraph 29 will not be applied when:

(1) A veteran's treatment is in a State soldier's home.

(2) An incarcerated veteran is confined to a prison hospital.

(3) A veteran is currently receiving a total rating because of a schedular evaluation or individual unemployability.

[(4) A veteran enters into a day hospital program but was not hospitalized as an inpatient in excess of 21 days.

(5) A veteran receives coincidental treatment for his or her service-connected condition(s) while hospitalized for nonservice-connected condition(s).]

e. **The Rating.** When the requirements of paragraph 29 are met, the rating will be increased to 100 percent following a period of continuous hospital treatment or observation in excess of 21 days. If there are two or more service-connected disabilities for which paragraph 29 would be applicable, only one of the conditions will be increased to the total rating. These ratings will be prepared as open-end ratings except that when information of the prerequisite hospitalization is not received until after termination of hospitalization, the following will apply:

(1) The total evaluation will continue through the last day of the month in which hospitalization or treatment for the service-connected disability terminates. Such termination may be due to hospital discharge (regular or irregular), or the cessation of treatment or observation for service-connected disabilities prior to discharge from the hospital.

(2) The total evaluation may initially be extended for 1 month, 2 months, or 3 months because of need for convalescence only when the veteran received an approved discharge from the hospital. The total evaluation then would be followed by applicable schedular evaluations for the residuals.

(3) When it is not possible to anticipate residuals, no open rating will be assigned, but reexamination will be requested sufficiently in advance to insure receipt of the report prior to expiration of the temporary total rating.

(4) It is permissible to initially assign a 1-month convalescence period and extend it to 2 months and/or 3 months if the facts so warrant. Following the temporary total rating, the disability will be evaluated under the applicable provisions of the Rating Schedule. Further extensions of 1 or more months, up to 3 months, may be made upon approval of the Adjudication Officer.

[(5) Immediate entry into a day hospital program following inpatient hospitalization in excess of 21 days for psychiatric illness, indicates the veteran is still in need of treatment and not able to return to employment. In this situation, extend the total evaluation. The total evaluation then would be followed by the applicable schedular evaluation(s) for the residuals.

(6)] The provisions of [38 CFR 3.105(e)] are not applicable unless the prehospital evaluation is reduced following assignment of the total rating.

f. **Completion of Items on Rating**

(1) The rating will be completed for entry in accordance with paragraph 49.05, on either VA Form 21-6796 (typed) (see fig. 53.01) or an overprint (handwritten) version with the following specific instructions.

(2) Under "Facts" must be shown:

(a) Diagnosis of the service-connected disability.

(b) Date of commencement of the entitling hospitalization.

(3) Rating code 1 will be shown in the rating conclusion and the diagnostic code will be shown opposite the disability. Under the disability the notation "100% from (the effective date of this paragraph 29 rating)" will be shown. Evaluations for other service-connected conditions will follow.

[(4)] SMC code 01, 02, or 14 entries will be made, as applicable.

g. **Followup Procedure.** Upon referral of the rating and award action thereon, the Authorization activity will establish a 60-day [pending issue] control to ensure receipt of confirmation of treatment or hospital release (and final summary) so that proper action may be taken (par. 25.23b(1).)

NOTE: Writeout Msg Code 884-VERIFY HOSP STATUS OF VET-OVER [3] MONTHS, [issues] every [3] months when 100 percent rate is being paid under paragraph 29 for the Authorization activity to determine if the veteran continues to be hospitalized. [Refer the claims file] to the rating board [ ] for consideration of schedular 100 percent rating when continued hospital status [exists beyond 6 months] or, if no longer hospitalized, for reversion to prehospitalized schedular rating.

53.03 PARAGRAPH 30–SURGICAL RATINGS

a. **Application.** Total ratings under paragraph 30 are for application only following regular hospital discharge, except as shown in subparagraph (3) below, regardless of the length of hospitalization, if treatment of the service-connected disability resulted in:

(1) Surgery necessitating at least 1-month convalescence.

(2) Surgery with severe postoperative residuals.

(3) Immobilization of at least one major point by cast without surgery (including that performed at an outpatient clinic).

b. **Preparation of Rating.** VA Form 21-6796 will be prepared in accordance with paragraph 49.05b with the following instructions:

(1) The diagnosis of the service-connected disability and date of hospitalization will be shown in the "Facts" portion of the narrative.

(2) The effective date for the awarding of paragraph 30 will be the date of hospitalization or a later date as warranted by the facts according to the criteria established under paragraph 53.02 for paragraph 29.

[(3)] SMC code 01, 02 or 14 entries will be made, as applicable.

c. **Duration of Grant.** A total closed rating will be assigned from the date of hospitalization through the month in which the veteran was discharged from the hospital and for 1, 2 or 3 additional months (but at least 1 month). An additional extension of 1, 2 or 3 months following the original 3-month extension may be granted as the facts warrant. Further extensions of 1 or more months, up to 6 months, may be made upon approval by the Adjudication Officer.

d. This total rating will be followed by an open rating reflecting the appropriate schedular evaluation for the residuals.

e. **Examinations.** When it is not possible to anticipate residuals, a reexamination will be requested sufficiently in advance to insure receipt of the report prior to the expiration of the closed rating. A computer control may be used for the issuance of VA Form 21-2507a, Request for Physical Examination. (Par. 55.06.)

(1) On receipt of the examination report, immediate rating and award actions will be taken so there will be no interruption in the compensation entitlement.

(2) When the residuals are less than the prehospital rate, rating action will be taken to show the 100 percent evaluation, followed by the prehospital evaluation for the period prescribed by [38 CFR 3.105(e)] and then by the reduced evaluation. Otherwise, the total ratings are not subject to the provisions of [38 CFR 3.105(e).]

f. **Continuation of Paragraph 29 Rating.** When a total rating under paragraph 29 is in effect at time of hospital discharge and the conditions requisite for extensions under that paragraph for an adequate convalescent period are present, resort to paragraph 30 is not necessary, however, when the final hospital summary establishes extension of the total rating for [periods beyond] 6 months after discharge, the total rating will be assigned under paragraph 30 from the date of hospital treatment upon approval by the Adjudication Officer.

[53.04 CONVALESCENT RATINGS BY DIAGNOSTIC CODES

a. **Application.** The Rating Schedule prescribes total evaluations under various diagnostic codes for specified periods of time (6 months, 1 year, or 2 years) following cessation of certain treatment, surgery, or manifestations of a disease.

b. **Reductions.** In all instances in which the period of time for the total evaluation is specified under a diagnostic code, the rating will provide a reduction to an evaluation consistent with the protected, known or minimum evaluation as of the end of the prescribed convalescent period. The award letter must fully advise the veteran of the fact of the potential reduction, including the effective date. The provisions of 38 CFR 3.105(e) are not applicable.

c. **Examinations**

(1) In each convalescent rating request an examination sufficiently in advance of the date on which the convalescent rating is scheduled to terminate to permit evaluation of the actual degree of disability before the reduction. Use a computer control for the issuance of VA Form 21-2507a, Request for Physical Examination. (See par. 55.06.)

(2) On receipt of the examination report, take immediate rating and award actions to insure no interruption of the compensation entitlement.

(3) If the examination reveals a higher evaluation is warranted following the convalescent period than had previously been anticipated (subpar. b above), assign the evaluation from the date the convalescent rating terminates.

(4) If the examination reveals a lower evaluation is warranted following the convalescent period than had previously been anticipated (subpar. b above), apply 38 CFR 3.105(e).

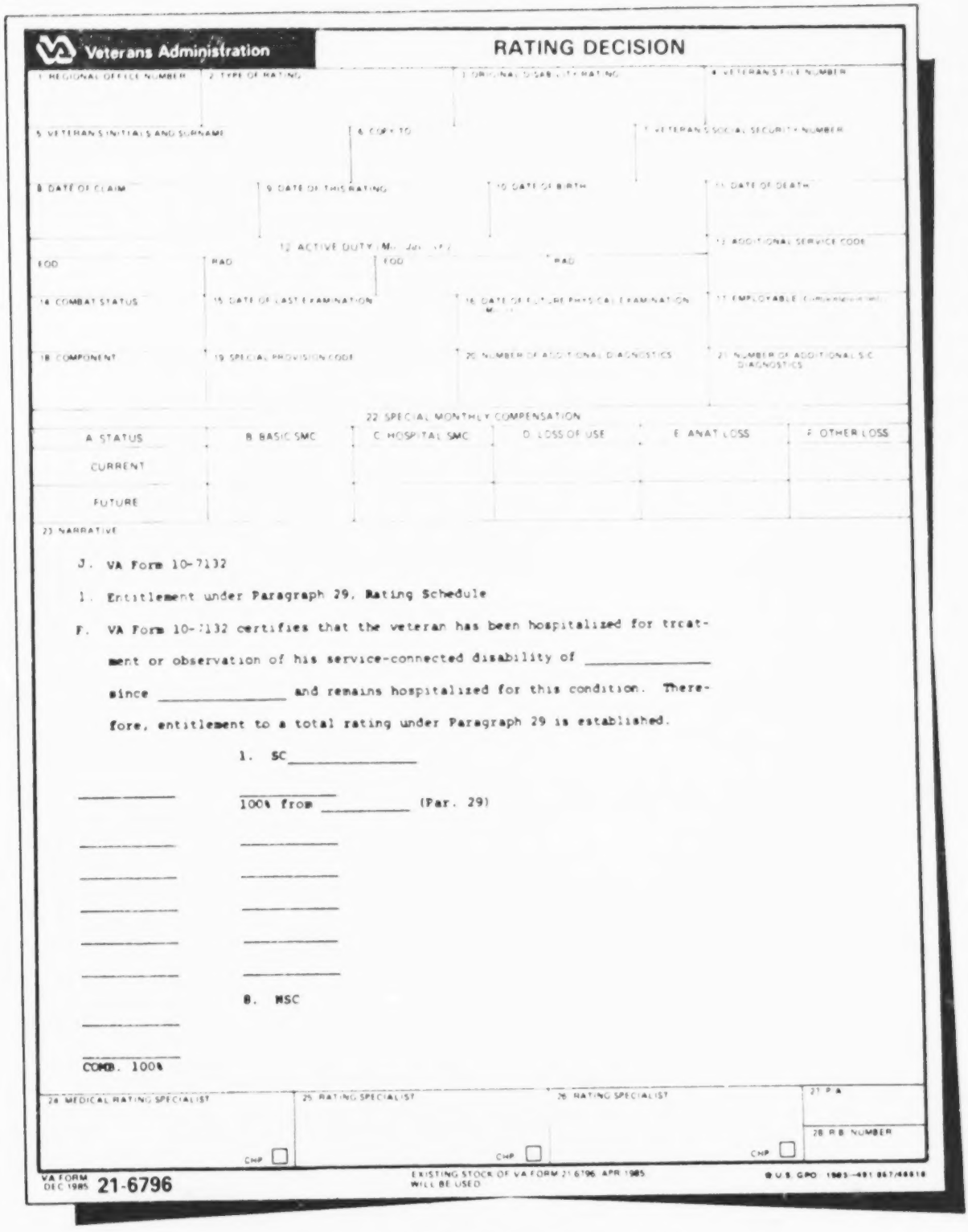
d. **Notifications.** The veteran must be notified of the initial rating for the convalescent period, including the date and evaluation following. If cases are encountered in which the veteran was not notified, apply 38 CFR 3.105(e).

e. **Effective Dates of Schedular Ratings for Convalescent Purposes**

(1) The convalescent period provided will begin as of the first of the month following hospital discharge if paragraph 29 benefits were granted.

(2) The convalescent period provided will begin as of the first of the month following the 1-month convalescent period under paragraph 30.

f. **Computer-generated Notices.** Whenever a rating is processed containing a 100 percent evaluation under a diagnostic code which specifies the total rating for a limited period of time, a diary will be generated at the appropriate time following the processing month, depending upon the diagnostic code. Message code 631 will be generated with the legend, "Review Need for Reevaluation." Upon receipt of these messages, the writeouts and claims folders will be referred to the rating board for review.]



Veterans Administration

RATING DECISION

1. REGIONAL OFFICE NUMBER | 2. TYPE OF RATING | 3. ORIGINAL DISABILITY RATING | 4. VETERAN'S FILE NUMBER

5. VETERAN'S INITIALS AND SURNAME | 6. COPY TO | 7. VETERAN'S SOCIAL SECURITY NUMBER

8. DATE OF CLAIM | 9. DATE OF THIS RATING | 10. DATE OF BIRTH | 11. DATE OF DEATH

12. ACTIVE DUTY (Mo. Day Yr.) | 13. ADDITIONAL SERVICE CODE

EOD | RAD | EOD | RAD

14. COMBAT STATUS | 15. DATE OF LAST EXAMINATION | 16. DATE OF FUTURE PHYSICAL EXAMINATION (Mo.) | 17. EMPLOYABLE (CHECK IF YES)

18. COMPONENT | 19. SPECIAL PROVISION CODE | 20. NUMBER OF ADDITIONAL DIAGNOSTICS | 21. NUMBER OF ADDITIONAL S/C DIAGNOSTICS

22. SPECIAL MONTHLY COMPENSATION

A. STATUS	B. BASIC SMC	C. HOSPITAL SMC	D. LOSS OF USE	E. ANAT LOSS	F. OTHER LOSS
CURRENT					
FUTURE					

23. NARRATIVE

J. VA Form 10-7132

1. Entitlement under Paragraph 29, Rating Schedule

F. VA Form 10-7132 certifies that the veteran has been hospitalized for treatment or observation of his service-connected disability of _____ since _____ and remains hospitalized for this condition. Therefore, entitlement to a total rating under Paragraph 29 is established.

1. SC_____

_____ _____

100% from _____ (Par. 29)

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

B. HSC

_____

_____

COMB. 100%

24. MEDICAL RATING SPECIALIST | CHP ☐

25. RATING SPECIALIST | CHP ☐

26. RATING SPECIALIST | CHP ☐

27. P&A

28. R&E NUMBER

VA FORM DEC 1985 21-6796

EXISTING STOCK OF VA FORM 21-6796 APR 1985 WILL BE USED.

© U.S. GPO: 1985—491-867/44818

Figure 53.01. VA Form 21-6796, Rating Decision
(Total Disability Because of Hospitalization)

CHAPTER 54. INCOMPETENCY RATINGS

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CHAPTER 54. INCOMPETENCY RATINGS

54.01 INCOMPETENCY CONSIDERATIONS

a. **Jurisdiction.** Rating boards have sole authority to make determinations of competency and incompetency for VA purposes (VAR 1353(B)). Under this authority rating determinations of incompetency of veterans and other payee beneficiaries will be made subject to due process requirements (par. 14.37).

b. **Rating Requirements.** Competency will be considered an issue in every case when there is a diagnosis of a psychosis or if other evidence raises a question as to the beneficiary's mental capacity to contract or to manage his/her own affairs including disbursements of funds without limitation. In the absence of clear evidence to the contrary, the presumption prevails that a person is competent.

(1) A rating issue of competency or incompetency must be determined on the basis of an adequate factual record, including findings of responsible medical authorities and other acceptable sources, and

(2) When determined appropriate in the judgment of the rating board, a field examination [ ] to provide evidence of ability to handle the funds which will be available to the beneficiary will be obtained.

(3) When the evidence of record supports a *probable* conclusion of incompetency, the rating board will issue a memorandum rating (complete in all aspects as in the case of formal ratings) proposing a change in competency status. (See par. 14.37g(1).)

(4) These sources and the facts elicited will be summarized briefly in the proposed and final rating decisions.

NOTE: No finding of incompetency will be made without a definite expression by responsible medical authority, unless the medical evidence of record is clear, convincing, and leaves no doubt as the beneficiary's incompetency (VAR 1353(C)).

c. **Opinion of Veterans Services Officer.** If, after development of information as to social economic and industrial adjustment, the Veterans Services Officer is of the opinion that a beneficiary rated or proposed to be rated incompetent is capable of handling the funds payable without limitation, the opinion will be referred to the rating board (par. 12.05). The board will, after any necessary additional development, prepare a rating based on all evidence of record to reflect its current determination, as to competency or incompetency.

d. **Rating Decision--Veterans**

(1) A determination of incompetency will be shown on the rating decision by use of rating code "33"(see app. A) following the combined evaluation. When a previously incompetent veteran has regained competency, this code will be completed to show the effective date of determination with a copy of the rating prepared for the Veterans Services Officer (see par. 12.12).

NOTE: A copy of rating will not be furnished in the case of a VA institutionalized veteran without a spouse, child or fiduciary, if VA Form 21-592, Request for Appointment of a Fiduciary, Custodian or Guardian, was not furnished earlier under the provisions of paragraph 28.07b(3). (See also par. 49.06a(4).)

(2) If a veteran is found to be competent and is not currently rated incompetent, the term "Competent" will be used following the diagnosis.

(3) Incompetency code 2 (Incompetent) will be entered on the rating when the board assigns rating code 33 irrespective of the method of payment, direct or through a fiduciary. (See par. 23.07 re entry of competency *payment* code on the disability award, by the adjudicator.)

(4) A rating of incompetency is controlling for the purposes of application of VAR 1557 (see par. 28.01).

e. Rating Decision—Other Beneficiaries. See paragraphs 54.02 and 54.03.

f. Court Adjudications. Judicial findings of a court with respect to competency are not controlling on the rating board. However, if a *veteran* is declared by a proper court to be incompetent [ ] all necessary evidence for a rating board determination will be developed. This may include an examination, hospital observation, [ ] or field examination.

(1) A court adjudication of incompetency with hospitalization for a mental condition should be given great weight, and a rating of *competency* should not be made unless there is clear and convincing evidence of that fact.

(a) The board will make a rating according to the facts, both as to degree of disability and competency.

(b) However, if the veteran is rated competent a prominent notation of the finding of incompetency by the court (naming it) will be placed on the rating.

(2) When a court decree of incompetency [ ] is made as to a [nonveteran] parent or surviving spouse beneficiary, a rating is not required, nor in the case of a helpless child except under the conditions specified in paragraph 11.03.

g. Consideration of Restored Competency—Release to or From Non-Bed Care

(1) In any case in which the beneficiary has been rated incompetent, necessary development and rating action will be taken to determine whether competency has been regained upon receipt of a hospital summary, report of release to or discharge from non-bed care, or report of other material change in condition.

(2) A field examination to provide evidence of ability to handle the funds which will be available to the beneficiary will be obtained prior to a rating board determination of restored competency in all cases in which funds have been withheld under VAR 1557 and is such other cases as determined appropriate in the judgment of the rating board.

(3) Similarly, if a veteran rated incompetent is declared competent by a court, necessary development and a new rating will be accomplished. If the rating continues its determination of incompetency, a prominent notation of the court's declaration will be entered on the rating. (See also par. 23.07 re competency payment code award data.)

(4) If the court decree applies to a nonveteran beneficiary for whom rating of incompetency was not required, the VSO will be requested to promptly certify the validity of the decree so that direct payments may be made to the beneficiary.

NOTE: Regained competency does not, of itself, warrant a reduction in evaluation of a veteran's disability nor establish that a parent or surviving spouse is no longer entitled to aid and attendance.

54.02 INCOMPETENCY OF A HELPLESS CHILD

a. Jurisdiction. When, in the case of a child over 18, entitlement depends upon permanent incapacity for self-support due to physical or mental disability, the issue will be resolved by the rating board. If incapacity is due to mental disability, competency is a factor for consideration [in determining whether the child is permanently incapable of self-support. However, as the incompetency rating procedures referred to in paragraph 14.37 are for payment purposes, those procedures are not for application except in cases in which the child would receive direct payment in his or her own right.]

b. Rating Decision. The decision as to incapacity will be based on the criteria in VAR 1356. Competency will be determined under the same criteria applicable to veterans. The board's determinations will be recorded in a memorandum rating, employing code 33, where applicable, following the basic entitlement code.

54.03 INCOMPETENCY OF OTHER BENEFICIARIES

a. **Jurisdiction.** Evidence that a widow(er), parent[, or VA insurance] beneficiary may be incompetent constitutes a rating issue for determination under VAR 1353 except when there has been a judicial determination of incompetency (par. 12.05a(4)). When evidence other than of judicial determination of incompetency has been received, a proposed rating on the issue of incompetency will be made or any required development undertaken as provided in paragraph 12.05b.

b. **Rating Decision.** Memorandum rating decisions will be employed for the preliminary and final rating of the issue, using rating code 33.

CHAPTER 55. PHYSICAL EXAMINATIONS AND SOCIAL SURVEYS

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CHAPTER 55. PHYSICAL EXAMINATIONS AND SOCIAL SURVEYS

55.01 EXAMINATION, HOSPITAL OBSERVATION, AND MEDICAL OPINION

a. Examinations. At least one VA examination should be performed for each disability claim. However, if determined to be adequate for rating, the following types of medical evidence may be considered a VA examination. (See 38 CFR 3.326(c) and (d).)

(1) SMR's (service medical records).

(2) Hospital summary or examination report from a military hospital.

(3) Reports from a Government hospital or a recognized private institution.

(4) For pension claims only, the statement of a private physician which meets the requirements of 38 CFR 3.326(d).

b. Adequate for Rating Purposes. The rating board or Adjudication Officer shall determine if the evidence above is adequate for rating purposes. The rating board shall consider the facts in each case, including the currency of the medical information, whether diagnoses are supported, and whether the evidence permits disposition and evaluation of all claimed disabilities. (See par. 55.03.)

c. Probability of a Valid Claim. If evidence sufficient for rating all of the claimed disabilities is not of record, authorize an examination if there is reasonable probability of a valid claim. Apply a *liberal* interpretation of "reasonable probability." (See par. 22.10.)

d. Requests for Examination

(1) General. The rating board has the sole responsibility to request examination of claimants, except in the following instances:

(a) At the discretion of the Adjudication Officer, Authorization personnel may request examinations in connection with claims for pension. (See par. 22.11.)

(b) The Adjudication Officer may authorize an examination in any case in which the Adjudication Officer believes an examination is warranted.

(2) Nonveteran Claimant Restrictions. Request examination of a nonveteran claimant of compensation or pension benefits only in the following instances:

(a) To determine if the claimant is entitled to the aid and attendance or housebound allowance.

(b) To determine if the claimant was insane at the time the claimant caused the death of the veteran. (See par. 14.09d.)

(c) To determine if a child claimant is helpless and/or incompetent.

(3) Nonveteran Beneficiaries. Do not request a VA examination for a nonveteran beneficiary. Field examinations may be requested as necessary.

e. Hospital Observation. If the issue to be resolved is particularly complex, the rating board may request a period of observation at a VA hospital to properly visualize and evaluate the disability in question.

f. Medical Opinion. If the rating board requests a medical opinion, enter a brief informative statement in Item 18 "Remarks" section of VA Form 21-2507, Request for Physical Examination, setting forth the issue(s) involved and the question(s) to be resolved on the basis of sound medical principles. *DO NOT* request the medical authority to assume any responsibility inherent to the rating board, e.g., to determine if there is loss of use of an extremity.

g. Claims Folders. Claims folders will not routinely accompany VA Form 21-2507 to the examining facility. POW exams, BVA remands, and other exceptional circumstances may warrant claims folder review by the examiner.

55.02 TYPES OF EXAMINATION

a. General Medical. A general medical examination, with a full report of complaints and functional impairments, is the preferred type of examination. A well-performed general medical examination will generally be of greater value than a number of uncorrelated specialist examinations.

(1) Cite body systems to be examined, as well as conditions or particular diagnoses which require attention.

(2) [To assist the examining physician, cite the relevant chapter and section of the Physician's Guide for each disability to be examined.]

b. Specialist Examinations. [VA medical centers do not schedule specialist examinations unless requested to do so. Consequently, the rating board shall request a specialist examination if it is considered essential for rating purposes, e.g., the diagnosis is not well established, or if the Board of Veterans Appeals asks for one. To assist the examining physician, cite the relevant chapter and section of the Physician's Guide for each disability to be examined.]

c. Prisoner of War. Review all POW claims (original, claim for increase, or reopened) to determine if the veteran was examined under the POW protocol (to include a social survey). If not, request an examination under the POW protocol unless medically contraindicated or specifically declined by the claimant or the claimant's representative. (See par. 22.06d.) The VA medical center or clinic conducting the POW protocol examination will forward a copy of VA Form 10-0048, Former POW Medical History, to the regional office of jurisdiction along with the medical and social survey portions of the examination. Retain this evidence in the claims folder. Give the medical protocol careful consideration in rating the POW claim as it may provide sufficient background information to relate the veteran's current symptomatology to the POW experience.

(1) Order initial POW protocol examinations even if medical evidence to support the claim is not of record. Request examination for all claimed conditions as well as all other conditions characteristically associated with confinement as a POW.

(2) If the veteran expressed dissatisfaction with either the initial examination or the rating based on the initial examination, order a reexamination. (See par. 22.06b re request to the veteran for additional information.)

d. Specially Adapted Housing. (See par. 47.12b.)

e. Employee-Veteran Examinations. Make every attempt to avoid the appearance of a conflict of interest in the scheduling of examinations for VA employees. If the claims folder contains VA Form 70-4535, Notice of Employment, Transfer or Separation of Veteran, ascertain the station of employment and annotate this information clearly on VA Form 21-2507.

(1) If the veteran is an employee of a VA medical facility, the veteran is not to be examined at the place of employment.

(2) If the veteran is an employee of a VBA regional office, the veteran is not to be examined at the hospital designated as the clinic of jurisdiction for that regional office.

(3) For exception to the above requirements, see paragraph 21.06a(2).

f. Aid and Attendance Examinations. If the evidence of record demonstrates reasonable probability of entitlement to aid and attendance, but is not sufficient to allow the benefit, request a special examination on VA Form 21-2507.

(1) Attach VA Form 21-2680, Examination of Housebound Status or Permanent Need for Regular Aid and Attendance, to VA Form 21-2507, and check the appropriate block in the item "Require Medical Examination of." VA Form 21-2680 has been designed with a dual function—first to pinpoint findings relevant to aid and attendance determinations under 38

CFR 3.351 and 3.352 and secondly, if need for aid and attendance is not shown, to provide a basis for determining if the housebound benefit may be paid.

(2) Do not use locally devised checklists for completion by physicians or others because functional impairment is seldom total in extent and, consequently, "yes" or "no" blocks do not provide sufficient descriptive information to assess the extent of a claimant's incapacitation.

(3) See paragraph 50.67 re claims for higher level of care.

55.03 ADEQUACY OF VA EXAMINATION

Be sure the examination is as full and complete as possible under existing circumstances. It must include a brief medical and industrial history from the date of discharge, or last examination, to the current date. See IB 11-56, Physician's Guide, paragraph 1.10 for the recommended examination procedure.

a. **Inadequate Reports.** Rating personnel shall determine the adequacy of VA examinations and reports of hospitalization for rating purposes. If the report is inadequate in any essential aspect, return it to the Clinic, or Health Care Facility Director, with a statement setting forth the deficiencies to be remedied. Avoid using language which can be construed as being adversarial when returning reports for clarification. For example, use the term "insufficient for rating purposes" rather than "inadequate examination". If necessary, the Adjudication Officer shall discuss unusual cases with the Health Care Facility Director to ensure proper understanding of the issue(s) at hand.

b. **Reconciliation of Diagnosis.** The manifestations of a disability are often difficult to classify as to the causative disease or injury. It is important that the same disability is not covered by more than one diagnosis and it is essential that any inconsistency and duplication between the findings of various specialists and the general examination is resolved by conference among the examiners before the report is returned as adequate for rating purposes. (See IB 11-56, par. 1.18.) It is of equal importance that a definite diagnosis be made to account for each complaint or symptom having a medical cause.

(1) If all claimed disabilities are not covered by the examination, return it as inadequate for rating purposes. (See par. 46.06 re partial rating decisions.)

(2) If the same disability is differently diagnosed by different examiners, return the report as inadequate for rating purposes. (See IB 11-56, par. 1.8.)

(3) If an examination report shows a change in the diagnosis or etiology for a disability previously recognized as service connected, and the examining physician(s) has not made the required certification per IB 11-56, paragraph 1.9, return the examination for clarification.

(4) If compelling reasons exist, the rating board may request that the claimant be reexamined by another physician. Request reexamination by preparing another VA Form 21-2507 and annotating the form to show that reexamination is necessary together with the name and VA station of the physician who conducted the prior examination.

(5) The rating board also has the authority to request "board" examinations to resolve complex issues, including but not limited to reconciliation of differing diagnoses, grant of special monthly compensation and entitlement to specially adapted housing. There should be at least two physicians (preferably three) on "board examinations" and at least one (preferably all) should be a recognized specialist in the particular field involved.

c. **Examination by Fee-Basis Physician.** There is no prohibition against acceptance of a VA examination for rating purposes by a fee-basis physician who has previously submitted a statement in the claimant's behalf.

d. **Signature and Approval of Reports.** All VA examinations, including fee-basis examinations and reports of hospitalization for observation and evaluation, are to be returned to the Adjudication Division by the Department of Medicine and Surgery facility of jurisdiction. If the report is not signed by the examining physician(s) and approved by the reviewing officer, i.e., the Director or his professional designee, return the report as inadequate for rating purposes.

e. Hospital Summaries (VA Form 10-1000, Discharge Summary). Hospital summaries from a VA medical center must be signed by the physician in charge of the case. These summaries may or may not be approved by the Chief of Service. In most cases a photocopy is submitted and not the signed original. If the copy submitted does not contain the treating physician's signature, or an affirmation that the original contains the signature of the treating physician, return it for signature of affirmation before undertaking any adjudicative action. The Adjudication Officer shall contact the Registrar of the hospital concerned to prevent the frequent submission of unsigned summaries.

f. Examination by Physician Assistant. Although a qualified physician's assistant may perform portions of an examination which are within the assistant's competence, the supervising physician shall furnish the diagnosis and sign the examination report.

g. Occupational and Medical History. VA Form 21-2545, Report of Medical Examination for Disability Evaluation, requires the veteran to furnish an occupational history and a medical history. This information is important to both the examining physician and to the evaluation of disabilities by the rating board. (DM&S Manual M-1, pt. I, par. 20.06, requires completion of an occupational and medical history prior to examination.)

(1) The veteran's statement of occupational and medical history is especially important in the evaluation of a veteran with a service-connected total evaluation for a mental disorder. Therefore, the veteran's statement of occupational and medical history on VA Form 21-2545 is required before the psychiatric condition is rated *unless* the examination report establishes or confirms that the veteran is either entitled to aid and attendance or housebound benefits, or is confined to an institution for long-term care, or is incompetent, or there is evidence less than 3 months old stating that the veteran is not employed.

(2) If a veteran with a total service-connected evaluation for a mental disorder has not completed sections A and B of VA Form 21-2545, and the exceptions to the requirement for completion of those sections do not apply, request the Authorization activity to take the following actions:

(a) Send a photocopy of page one of the incomplete VA Form 21-2545 to the veteran with a dictated letter. Inform the veteran that sections A and B must be completed and returned within 30 days. Notify the veteran that failure to submit this could result in denial, suspension, reduction or termination of benefits. Also include the due-process language of figure 14-4, chapter 14.

(b) Establish a 30-day control for the return of this statement.

(3) Rate the case upon receipt of the requested statement to determine whether the total evaluation for the mental disorder is to be continued or reduced.

(4) If the veteran has not completed and returned the copy of page one of VA Form 21-2545 within the 30-day control period, rate the case to determine whether the total evaluation for the mental disorder is to be continued or reduced. The fact that the veteran failed to make a positive statement concerning employment status is a factor to be considered by the rating board.

55.04 FIXING FUTURE DATE OF EXAMINATION

Base the future date of examination on the facts and circumstances of each case. Consider whether the veteran's current condition is an acute exacerbation or whether the veteran is still recuperating following hospitalization. Also consider if improvement or recovery can be anticipated. If not, do not schedule a future review examination. Medical evidence from any of the sources listed in 38 CFR 3.326(c) may serve to satisfy the need for reexamination.

a. Compensation Cases. Exercise prudent judgment and refer to 38 CFR 3.327(b) in determining the need for reexamination. As each case is unique, do not apply an arbitrary fixed timetable in determining the need for reexamination. However, if an examination is required to determine residual disability following a limited 100 percent evaluation (i.e., a 100 percent evaluation during and for 6 months following acute illness from coronary occlusion, a 100 percent evaluation for 1 year following the cessation of surgical, x ray, antineoplastic chemotherapy or other therapeutic procedure for malignant new growths, etc.), schedule reexamination irrespective of the veteran's age.

b. **Pension Cases.** Do not routinely request reexamination in disability pension cases. If a reexamination is scheduled, fully explain the reason for reexamination in the discussion portion of the rating decision.

55.05 CONTROL OF FUTURE EXAMINATION IN RUNNING AWARDS

a. **Establishment and Maintenance of Control.** If reexamination is to be scheduled 3 or more months in the future, establish and maintain computer control under reason code 01 by entry in the future physical examination block of the rating decision. (See par. 49.14.) If reexamination is not to be scheduled, or if a future examination previously established is to be canceled, enter "NO EXAM" in the future physical examination block of the rating decision. (See par. 47.14 re determination of basic eligibility to Dependents' Educational Assistance.)

b. **Maturity of Future Date Control.** In the second processing month before the maturity of the future date, a VA Form 21-2507a, Request for Physical Examination (Hines), will be generated. All items of identification, including the veteran's name and address, and diagnostic codes will be preprinted on the form. A rating board member shall review the folder to determine whether to proceed, advance or cancel the date of examination.

(1) If the board member decides to proceed with the examination, the rating board member shall complete the VA Form 21-2507a. As only diagnostic codes are preprinted on VA Form 21-2507a, enter the diagnosis for each of the disabilities to be examined. *NOTE: As necessary, preprinted entries including the address, may be deleted or corrected, and additional disabilities (including diagnostic code) added.*

(2) If the examination is to be rescheduled to a future date, the board member shall prepare a deferred rating setting forth the reasons therefore, and the new date of examination.

(a) If the new examination date is more than 3 months in the future, Authorization shall use the DIAR command to establish control. (See par. 1.12.)

(b) If the new examination date is less than 3 months in the future, Authorization shall control by establishing a future pending issue file. (See par. 1.15c.)

(3) See paragraph 55.06 for necessary action if the future examination is to be canceled.

55.06 UNNECESSARY EXAMINATIONS—CANCELLATION

The rating board shall exercise discretion in scheduling all reexaminations so as not to request unnecessary examinations. (See 38 CFR 3.327(b) and (c).) In addition, do not request an examination solely to confirm evidence listed in 38 CFR 3.326(c) which is otherwise adequate for rating. Depending upon the degree of disability, take the following action upon cancellation of a future examination.

a. **Disability Less Than Total.** If the veteran is receiving less than total compensation (i.e., less than 100 percent schedular and not entitled to individual unemployability) and it is determined that a future examination is to be canceled, a rating board member shall annotate the original copy of VA Form 21-2507a to this effect. The rating board member shall also sign and date VA Form 21-2507a and dispose of all carbon copies under RCS VB-1, part I, item 13-052.1 before referring the original with the claims folder to Authorization.

b. **Total Disability Rating.** If the veteran is receiving total compensation, either by reason of a 100 percent schedular evaluation, or by entitlement to individual unemployability, and it is determined that a future examination should be canceled, take the following action:

(1) If there are eligible or potentially eligible claimants for Dependents Educational Assistance (DEA), prepare a memorandum rating under paragraph 47.14d. Authorization personnel shall then take action to provide notice of potential entitlement to DEA under paragraph 15.11r.

(2) If there is no eligible or potentially eligible claimants for DEA, take action under subparagraph a above.

c. **Death of Veteran.** See paragraph 31.04a.

55.07 FAILURE TO REPORT FOR EXAMINATION

a. Pending Claims. If a claimant fails to report for a VA examination in connection with a pending claim, Authorization shall refer the claims folder to the rating board for consideration of evidence of record under 38 CFR 3.326(c) and (d).

(1) The rating board shall determine whether there is adequate evidence of record to take favorable rating action on any of the disabilities at issue. Favorable rating action includes the granting of a noncompensable service-connected evaluation as this provides for VA hospital treatment.

(2) If evidence adequate for favorable rating action is of record for any of the claimed disabilities, the rating board shall rate them and defer actions (code 38) on any disabilities currently not ratable and then send the case to Authorization for action.

EXAMPLE: On August 12, 1984 the veteran filed a claim alleging service connection for a GSW (gunshot wound) on the lower left leg. Service medical records showed the veteran had sustained a combat related through and through GSW of the posterior left calf and definite muscle injury of MG (muscle group) XI. On October 1, 1984 we are told that the veteran failed to report for a scheduled VA examination.

Discussion: As a through and through injury, with muscle damage, is always at least a moderate injury, the rating board shall issue a formal rating granting service connection for the through and through GSW, evaluating the muscle injury as moderate.

	1. SC (VE Inc)
5311	GSW, through and through, left posterior calf, moderate
	10% from 8/12/84

(3) If the evidence of record is inadequate for rating purposes, the rating specialist shall prepare and sign a deferred rating stating "Claimant failed to prosecute claim, evidence of record is insufficient for rating purposes." Return the deferred rating, along with the claims folder to the Authorization Unit.

b. Running Awards. See paragraphs 24.08 and 28.04.

55.08 CONTROL OF EVALUATIONS BASED ON INDIVIDUAL UNEMPLOYABILITY

If a total service-connected evaluation based on individual unemployability is assigned, the system will automatically establish future date controls for annual return of employment questionnaires and ~~field examinations~~. Annual employment questionnaires will be sent for 19 years, or until age 64, ~~and~~ controls for ~~field examinations will be established 2 and 10 years~~ after the award for ~~individual unemployability is processed. However, the rating board shall request the~~ Authorization activity to amend or ~~cancel these~~ controls, ~~as appropriate, if a veteran's benefits are being restored from a previous date of reduction~~.

a. Exceptions. Controls under this paragraph are not required in the following instances:

(1) If a veteran is 65 years of age, or

(2) If the veteran has been in receipt of benefits at the total rate for 20 continuous years, or

(3) If the combined service-connected disability is increased to a 100 percent schedular evaluation.

b. Dispatch and Control for Return of Questionnaires. Master record diaries under reason code 02, Individual Unemployability Review, will generate automatically when awards are processed to pay at the total rate because of individual unemployability.

(1) Hines DPC will mail VA Form 21-4140, Employment Questionnaire, annually upon maturity of the future date established under reason code 02.

(2) VA Form 20-6560, Notice of Benefit Payment Transaction (Hines), message code 631, Diaried Action Due, reason code 02, will be issued.

(3) A master record diary under reason code 34, Review for Return of VA Form 21-4140 will automatically establish control for the return of VA Form 21-4140 2 months from the month the employment questionnaire is generated and mailed from the DPC.

(4) If the Hines DPC is unable to generate VA Form 21-4140, a VA Form 20-8270, C&P Master Record—Audit Writeout (Hines), with message code 882B, Employability Letter Not Sent, will generate. Also a future diary under reason code 31 shall be established 3 months from the month in which message code 882B was generated. This is to control for the return of VA Form 21-4140, which shall be mailed by Authorization to the veteran upon receipt of message 882B.

NOTE: As a local option, a pending issue file may be established under end product 310 upon receipt of either message code 631 or 882B.

(5) A master record diary under reason code 32, Expiration of Employability Control, will generate 19 years from the effective date of the grant of total benefits or age 64, whichever is earlier. This diary will control the release of the last VA Form 21-4140.

c. **Continued Unemployability.** If the completed questionnaire shows continued unemployability, file the completed questionnaire in the claims folder without referral to the rating board. Clear end product 310 by use of the PCLR command and clear the future diary reason code 34 by use of the DIAR command. (See par. 1.12b.)

d. **Employment Regained.** If the completed questionnaire suggests regained employment, Authorization shall refer the claims folder to the rating board.

e. **Questionnaire Not Returned.** If the questionnaire is not returned, refer the claims folder to the rating board. The rating board shall then prepare a rating reducing the veteran to the schedular evaluation as of date of last payment under 38 CFR 3.501(f). Authorization shall notify the veteran of the action taken, and that if evidence establishing continued unemployability is received within 1 year from the date of the letter, the total rating based on individual unemployability shall be restored from the date of reduction.

f. **Control for Field Examinations**

(1) Upon processing of an award of individual unemployability, controls will be automatically established to generate VA Form 20-6560, message code 631—Diaried Action due—bearing the following legends.

(a) RSN 33—"Initial Field Exam—Unemployability," will generate 2 years from the processing month of the award granting total benefits.

(b) RSN 35—"10-Year Field Exam—Unemployability," will generate 10 years from the processing month of the award granting total benefits.

(2) Carefully review the claims folder upon receipt of VA Form 20-6560.

(a) If a VA Form 27-3537b, Report of Field Examination, or other documentation containing adequate employment information has been completed within the previous 6 months, do not request a field examination.

(b) Refer evidence indicating possible regained employability to the rating board prior to requesting a field examination. If unemployability is confirmed or discontinued by rating decision, do not request a field examination.

(c) If the folder review shows no employment or if the evidence in file is contradictory or unsatisfactory, prepare VA Form 27-3537a, Field Examination Request. Include any pertinent medical information and VA Forms 21-4140 for the prior 2 years. Requests for 2-year reviews will include the VA Forms 21-8940, Veterans Application for Increased Compensation Based on Unemployability, and 21-4192, Request for Employment Information in Connection With Claim for Disability Benefits.

(3) Establish a 60-day control under end product 290. Follow up upon the expiration of the control period for the completed field examination, and every 30 days thereafter, until received.

(4) Notify the veteran by dictated letter that a VA representative shall contact the veteran in the near future to obtain information required to determine continuing entitlement to total benefits based on unemployability. Include in the letter to the veteran notification that benefits may be reduced to the schedular amount (provide the appropriate percentage and rate) if the veteran fails to complete the interview without adequate reason (38 CFR 3.329). Release this letter to the veteran at the same time the field examination is requested on VA Form 27-3537a.

g. **Action on Receipt of Completed Field Examination**

(1) Clear the end product and do not refer the examination to the rating board, if the field examination demonstrates continued unemployability.

(2) Authorization shall refer field examinations suggesting regained employment to the rating board. The rating board shall review the complete evidentiary record and take appropriate action:

(a) If the evidence continues to support a finding of unemployability, prepare a confirmed rating.

(b) If the ability to follow gainful employment is shown, prepare a rating reducing the veteran to the schedular evaluation under the provisions of 38 CFR 3.105(e).

(c) If the evidence suggests an improvement in service-connected disabilities, in addition to the above reduction under 38 CFR 3.3105(e) the rating board shall request reexamination and reevaluate any service-connected disabilities upon receipt.

(d) If the veteran contests a proposed reduction to the schedular evaluation, and submits evidence tending to support increased disability, consider reexamination.

h. **Veteran Refuses To Cooperate.** The Veterans Services Division will notify Adjudication if the veteran refused to meet with the field examiner or failed to complete an interview without adequate reason. Take the following action upon receipt of this information:

(1) Notice of the veteran's unwillingness to cooperate shall be referred to the rating board.

(2) The rating board shall reduce the rating to the schedular evaluation effective the date of last payment under 38 CFR 3.501(f) and 3.500(v).

(3) Authorization shall prepare an award reducing the rate to the amount payable for the combined schedular evaluation effective the date of last payment. Authorization shall also notify the veteran of the action taken, and furnish the veteran with detailed information as to the reason for reduction. The veteran shall also be notified that total benefits may be resumed, if sufficient evidence of continuing unemployability, including completion of a field examination, is received within 1 year from the date of the dictated letter.

NOTE: If the veteran is reduced to the schedular evaluation for failure to complete the field examination or to return an employment questionnaire, the master record diaries are automatically canceled. If the veteran is subsequently restored to the total rate due to individual unemployability retroactive to the date of reduction, the diaries will be automatically reestablished. However, these diaries must be reviewed by Authorization to verify the appropriateness of these control dates.

i. **Preparation of Rating Decision.** VA Form 21-6796, Rating Decision, may be completed using the example shown in figures 55.01, 55.02, 55.03, and 55.04. The formated rating may be handwritten in ink if the decision is based upon failure to (1) return the employment questionnaire, or (2) to complete the field examination, or (3) upon receipt of evidence which warrants restoration of a total rating based on continued unemployability. Complete all applicable items in the heading of the rating sheet as required under paragraph 49.05b.

55.09 SOCIAL SURVEYS AND FIELD EXAMINATIONS

a. **Examination by Social Survey.** If there has been at least one accepted VA examination, and the diagnosis is established, a social survey is an acceptable type of examination if the rating issue is a degree of disability, i.e., social and industrial adaptability or industrial impairment. Examples of this may occur in veterans with psychiatric illness; arrested tuberculosis; loss of limbs, sight, or hearing; or with physical disfigurement resulting in feelings of inferiority. Cases involving epilepsy also fall into this category; however, do not request an economic and social survey in a case involving epilepsy without first obtaining the consent of the claimant to conduct the survey.

(1) Request a social survey for rating purposes only when deemed necessary for correct rating of the individual case.

(2) Comprehensive social surveys for medical and rating purposes are the duty of social workers. They are to be conducted in accordance with paragraph 1.14 of IB 11-56, and if determined to be inadequate for rating by the rating board, are to be returned for clarification.

(3) VA Form 21-2507 will include ample information concerning the purpose of examination and evidence requested to assist the social worker conducting the survey.

b. **Field Examination.** A field examination may be requested to check on employment and social adjustment, or to substantiate items of evidence as to existence as to existence of disease or injury prior to enlistment. See par. 7.07.

55.10 PREPARATION AND PROCESSING OF VA FORM 21-2507, Request for Physical Examination

Use VA Forms 21-2507 and 2507a to request examinations, periods of hospitalization for observation and evaluation, medical opinions, and social surveys. Complete the applicable form in longhand or, as a local option, by dictation.

a. **Completeness.** Complete the items on VA Form 21-2507 or 2507a as follows:

(1) **File Number**

(2) **Social Security Number** if different than the file number.

(3) **Year of Birth** (last two digits will suffice)

(4) **Sex**

(5) **Period of Service.** Earliest entitling period of service in a pension claim or latest period of service in a compensation claim.

(6) **First name Middle Initial—Last name of Veteran**

(a) If the person to be examined is not a veteran, draw a line through the word "veteran" and substitute the appropriate designation.

(b) If the person to be examined is rated incompetent, indicate this by adding the word "incompetent" after the name.

(7) **Address of Veteran.** Exercise care in reviewing correspondence from the veteran to ascertain the current address. If there is any discrepancy noted, refer the VA Form 21-2507 to Authorization for Target access to determine the latest address of record to be entered in this block. For incompetent veterans, see paragraph 28.04.

(8) **Regional Office.** Identify the requesting regional office by entering the station name.

(9) **Priority of Examination.** As examination priorities are determined by the examining facility based on entries in this item, boldly check the applicable box(es) to enhance proper scheduling.

(10) **Please Conduct.** Check block A to request a general medical examination to cover all disabilities claimed or noted. Use block B in all other cases, indicating the particular disabilities for examination.

(11) **Service-Connected Disabilities.** List the diagnostic code(s) for each of the service-connected disabilities shown on the latest rating decision. Verify correctness of the service connected diagnostic code preprinted on VA Form 21-2507a. [List the descriptive terminology for each disability as employed on the latest rating decision. Indicate by a check mark those service-connected disabilities to be examined.]

NOTE: The medical examiner will conduct an examination for all requested disabilities, as well as for any of the other service-connected disabilities, for which the veteran complains of during the examination.

(12) **Other Disabilities.** Provide an adequate description of the nature of all other conditions to be examined.

(13) **Require Medical Determination Of.** Use this space to request a determination as to competency, or need for aid and attendance or housebound.

(14) **Specialist Examinations.** Check this box to request a specialist examination, and to explain the nature of the examination and the reason for its request in the Remarks section. If the request is secondary to a Board of Veterans Appeals remand, attach a copy of the remand decision to the examination request.

(15) **Physicians Guide Reference.** Complete this section, stating the appropriate chapter and section of the Physician's Guide for all disabilities to be examined.

(16) **Remarks.** Do not use manual, regulation or code citations. Restrict entries to clarifying remarks as to the issue(s) to be resolved and/or the type of examination request.

(17) **Claimant Represented By.** Indicate by an appropriate check or annotation the current accredited service organization of record.

(18) **Date, Signature of Authorizing Official Symbol, and Board Number.** Enter the date the form is signed, the authorizing official; i.e., the individual completing the request for examination, and his or her correspondence symbol or board number.

b. **Processing.** Reverse file the claims folder copy (green) of VA Form 21-2507 or 21-2507a pending receipt of the examination. Dispose of the claims folder copy under RCS VB-1, part I, item 13-052.300 upon receipt of the examination report. Forward the original and medical control copy to the clinic serving the preparing station, except that:

(1) The Washington regional office shall forward requests for examination of veterans living within the jurisdiction of another regional office to the Director of the health care facility at the appropriate station.

(2) All regional offices shall forward requests for examination of veterans residing in foreign countries (other than the Philippines) to the Associate Chief of Staff for Ambulatory Care, VA Medical Center, Washington, DC.

NOTE: The scheduling clinic will normally advise the person to be examined of the time and place of examination.

c. **Notification.** Promptly notify the person to be examined using the Target "VA EXAM" field on the 208 screen each time an examination is scheduled. Use this field separately or in conjunction with the other "EVIDENCE REQUESTED BY VA" fields.

d. Control and Followup

(1) The Adjudication Officer shall maintain continuing liaison with the clinic or medical center Director to determine the appropriate initial control period based on the current examination workload. In most cases, an initial control period of 60 days should be established for the return of completed examinations.

(2) Upon the expiration of the initial control period, request the status of the pending examination by completing VA Form 21-4199, Status of Requests for Physical Examinations.

(3) Forward the original to the appropriate Chief Medical Officer and reverse file the carbon control copy. (Dispose of the copy under RCS VB-1, pt. I, item 13.052 upon return of the original.)

(4) If the original VA Form 21-4199 is returned with the completed examination, route the completed examination and claims folder to the rating board.

(5) If the original VA Form 21-4199 is returned without the completed examination, consider the reason provided for delay, and reestablish control for additional followup in 30, 60, or 90 days.

(6) If special circumstances require an expedited followup, a telephone or personal conference between the Adjudication Officer and clinic Director may be necessary.

55.11 JOINT CONFERENCES

a. Adjudication Division staff officials will hold, as needed, periodic conferences with VA health care facility personnel. The conferees shall discuss the adequacy of medical examinations for rating purposes, timeliness of reports, administrative procedures, preparation of forms, social service reports, and other problems of mutual interest to insure that both DVB and DM&S personnel strive to provide the highest quality of services. Maintain minutes of the conferences; but do not submit a report to Central Office unless problems are encountered for which local management believes Central Office consideration is required. If submission is deemed appropriate, submit the report to Central Office (212). (See also IB-11-56, par. 1.4.)

Veterans Administration

RATING DECISION

1 REGIONAL OFFICE NUMBER	2 TYPE OF RATING	3 ORIGINAL DISABILITY RATING	4 VETERAN'S FILE NUMBER

5 VETERAN'S INITIALS AND SURNAME	6 COPY TO	7 VETERAN'S SOCIAL SECURITY NUMBER

8 DATE OF CLAIM	9 DATE OF THIS RATING	10 DATE OF BIRTH	11 DATE OF DEATH

12 ACTIVE DUTY (Mo., day., yr.)				13 ADDITIONAL SERVICE CODE
EOD	RAD	EOD	RAD	

14 COMBAT STATUS	15 DATE OF LAST EXAMINATION	16 DATE OF FUTURE PHYSICAL EXAMINATION (Mo., yr.)	17 EMPLOYABLE (Unemployable (Mo./yr.))

18 COMPONENT	19 SPECIAL PROVISION CODE	20 NUMBER OF ADDITIONAL DIAGNOSTICS	21 NUMBER OF ADDITIONAL S/C DIAGNOSTICS

22 SPECIAL MONTHLY COMPENSATION

A STATUS	B BASIC SMC	C HOSPITAL SMC	D LOSS OF USE	E ANAT LOSS	F OTHER LOSS
CURRENT					
FUTURE					

23 NARRATIVE

J. VA Form 21-4140, Employment Questionnaire or Equivalent Evidence

I. Total disability because of unemployability

F. Total disability rating because of unemployability was reduced to schedular evaluation because of failure to return employment questionnaire. Questionnaire or other evidence later received established that the veteran continues to be unemployable.

1. SC ( )

_____ _____from_____

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

8. NSC

_____

_____

COMB: _____ 18. Individual Unemployability from _____

24 MEDICAL RATING SPECIALIST	25 RATING SPECIALIST	26 RATING SPECIALIST	27 P.A.
CHP ☐	CHP ☐	CHP ☐	28 R.B. NUMBER

VA FORM DEC 1985 **21-6796**

EXISTING STOCK OF VA FORM 21-6796, APR 1985 WILL BE USED

★U.S. GPO: 1985-491-867/40818

Figure 55.01. VA Form 21-6796, Rating Decision
(Reduction to Schedular Evaluation, Nonreturn of VA Form 21-4140)

Veterans Administration

RATING DECISION

1 REGIONAL OFFICE NUMBER	2 TYPE OF RATING	3 ORIGINAL DISABILITY RATING	4 VETERAN'S FILE NUMBER

5 VETERAN'S INITIALS AND SURNAME	6 COPY TO	7 VETERAN'S SOCIAL SECURITY NUMBER

8 DATE OF CLAIM	9 DATE OF THIS RATING	10 DATE OF BIRTH	11 DATE OF DEATH

12 ACTIVE DUTY (Mo. Day. Yr.)				13 ADDITIONAL SERVICE CODE
EOD	RAD	EOD	RAD	

14 COMBAT STATUS	15 DATE OF LAST EXAMINATION	16 DATE OF FUTURE PHYSICAL EXAMINATION (Mo. Yr.)	17 EMPLOYABLE (Yes/No/Will not be)

18 COMPONENT	19 SPECIAL PROVISION CODE	20 NUMBER OF ADDITIONAL DIAGNOSTICS	21 NUMBER OF ADDITIONAL SIC DIAGNOSTICS

22 SPECIAL MONTHLY COMPENSATION

A STATUS	B BASIC SMC	C HOSPITAL SMC	D LOSS OF USE	E ANAT LOSS	F OTHER LOSS
CURRENT					
FUTURE					

23 NARRATIVE

J. VSO Notification

I. Reduction to Schedular Evaluation

F. A tqtal disability rating has been in effect because of unemployability. Notice has been received that the veteran has refused to cooperate in the conduction of a required field examination. Therefore, reduction to the schedular evaluation is in order.

1. SC ( )

_____ _____from_____

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

8. NSC

_____

_____

COMB:_____18. Individual Unemployability from_____ to_____ (DLP)

24 MEDICAL RATING SPECIALIST	25 RATING SPECIALIST	26 RATING SPECIALIST	27 P/A
CNP ☐	CNP ☐	CNP ☐	28 R.O. NUMBER

VA FORM DEC 1985 **21-6796**

EXISTING STOCK OF VA FORM 21-6796 APR 1985 WILL BE USED

U.S. GPO: 1985—491-667/40019

Figure 55.02. VA Form 21-6796, Rating Decision
(Reduction to Schedular Evaluation, Noncompletion of Field Examination)

Veterans Administration

RATING DECISION

1 REGIONAL OFFICE NUMBER	2 TYPE OF RATING	3 ORIGINAL DISABILITY RATING	4 VETERAN'S FILE NUMBER

5 VETERAN'S INITIALS AND SURNAME	6 COPY TO	7 VETERAN'S SOCIAL SECURITY NUMBER

8 DATE OF CLAIM	9 DATE OF THIS RATING	10 DATE OF BIRTH	11 DATE OF DEATH

12 ACTIVE DUTY (Mo. Day Yr.)				13 ADDITIONAL SERVICE CODE
EOD	RAD	EOD	RAD	

14 COMBAT STATUS	15 DATE OF LAST EXAMINATION	16 DATE OF FUTURE PHYSICAL EXAMINATION (Mo. Yr.)	17 EMPLOYABLE (Compensation only)

18 COMPONENT	19 SPECIAL PROVISION CODE	20 NUMBER OF ADDITIONAL DIAGNOSTICS	21 NUMBER OF ADDITIONAL S/C DIAGNOSTICS

22 SPECIAL MONTHLY COMPENSATION

A STATUS	B BASIC SMC	C HOSPITAL SMC	D LOSS OF USE	E ANAT LOSS	F OTHER LOSS
CURRENT					
FUTURE					

23 NARRATIVE

J. VA Form 21-4140, Employment Questionnaire Diary

I. Reduction to Schedular Evaluation

F. A total disability rating has been in effect because of unemployability. VA Form 21-4140, Employment Questionnaire, dispatched has not been returned. Therefore, reduction to schedular evaluation is in order.

I. SC ( )

_____ _____from_____

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

B. NSC

_____

_____

_____

COMB:_____18. Individual Unemployability from _____to_____(DLP)

24 MEDICAL RATING SPECIALIST	25 RATING SPECIALIST	26 RATING SPECIALIST	27 F/A
CHP ☐	CHP ☐	CHP ☐	28 F.E. NUMBER

VA FORM DEC 1985 **21-6796**

EXISTING STOCK OF VA FORM 21-6796, APR 1985 WILL BE USED

U.S. GPO: 1985—491 867/40510

Figure 55.03. VA Form 21-6796, Rating Decision (Receipt of Unemployability Evidence)

Veterans Administration

RATING DECISION

1. REGIONAL OFFICE NUMBER	2. TYPE OF RATING	3. ORIGINAL DISABILITY RATING	4. VETERAN'S FILE NUMBER

5. VETERAN'S INITIALS AND SURNAME	6. COPY TO	7. VETERAN'S SOCIAL SECURITY NUMBER

8. DATE OF CLAIM	9. DATE OF THIS RATING	10. DATE OF BIRTH	11. DATE OF DEATH

12. ACTIVE DUTY (Mo. Day. Yr.)				13. ADDITIONAL SERVICE CODE
EOD	RAD	EOD	RAD	

14. COMBAT STATUS	15. DATE OF LAST EXAMINATION	16. DATE OF FUTURE PHYSICAL EXAMINATION (Mo. Yr.)	17. EMPLOYABLE (Yes, No, Not Determined)

18. COMPONENT	19. SPECIAL PROVISION CODE	20. NUMBER OF ADDITIONAL DIAGNOSTICS	21. NUMBER OF ADDITIONAL S/C DIAGNOSTICS

22. SPECIAL MONTHLY COMPENSATION

A. STATUS	B. BASIC SMC	C. HOSPITAL SMC	D. LOSS OF USE	E. ANAT. LOSS	F. OTHER LOSS
CURRENT					
FUTURE					

23. NARRATIVE

J. Completion of field examination

I. Total disability because of unemployability

F. Total disability rating because of unemployability was reduced to the schedular evaluation because of lack of cooperation in completing a required field examination. Sufficient evidence, including completion of the field examination, has been received establishing continuing unemployability. Therefore, the total rating based on unemployability is returned.

1. SC ( )

_____ _____from_____

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

8. NSC

_____

_____

COMB: 18. Individual Unemployability from_____

24. MEDICAL RATING SPECIALIST	25. RATING SPECIALIST	26. RATING SPECIALIST	27. P.A.
CNP ☐	CNP ☐	CNP ☐	28. R.B. NUMBER

VA FORM DEC 1985 **21-6796**

EXISTING STOCK OF VA FORM 21-6796 APR 1985 WILL BE USED

U.S. GPO 1985—491 867/40619

Figure 55.04. VA Form 21-6796, Rating Decision (Completion of Field Examination)

CHAPTER 56. DEATH RATINGS

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CHAPTER 56. DEATH RATINGS

SUBCHAPTER I. GENERAL

56.01 DEGREE OF FINALITY AND REVIEW OF ENTIRE FILE

It must be understood and appreciated that there is a degree of finality in death ratings generally not ascribable to disability rating decisions. Accordingly, in cases requiring a rating decision (see pars. 34.02, 34.05b and 34.06a) the entire file must be thoroughly reviewed, since the surviving dependents of the veteran may require more assistance from [ ] VA in the development of evidence relating to service connection of diseases and injuries than would the veteran.

a. Disability rating decisions made during the veteran's lifetime which could affect a survivor's entitlement to benefits, pro or con, must be verified as to the nonexistence of clear and unmistakable error, the effect of current evidence and a reasonable basis for difference of opinion.

b. If a clear and unmistakable error exists, the provisions of 38 CFR 3.105(a) and (d) are applicable. (See pars. 48.08 and 48.09.)

c. If a difference of opinion exists, the provisions of 38 CFR 3.105(b) are applicable. (see par. 19.05.)

56.02 SPECIAL CIRCUMSTANCES OF DEATH CASES

a. Death rating decisions involve a high degree of discretion in the consideration and evaluation of evidence on the basis of each individual claim with due regard to the special conditions and circumstances arising by reason of the veteran's death.

b. [Do not] render a rating decision adverse to the claimant because an issue material to entitlement cannot be established with the same degree of certainty as in disability cases; e.g., because the veteran cannot be physically examined.

c. There should not be any reluctance to accept affidavits or certified evidence without unnecessary development of potential corroborative evidence as in cases of chronic diseases.

56.03 EVIDENCE REQUIRED

a. **Service Medical Records and Postservice Hospitalization Reports.** [ ] Secure complete service medical records and reports of all indicated postservice hospitalization within the presumptive periods provided for certain diseases (38 CFR 3.307) except when it is clearly apparent that the cause of death is not related to service, such as in the following types of cases:

(1) Death occurring more than 5 years after separation from service is "accidental" or the result of an acute or malignant condition; or

(2) Death occurring within 5 years of separation from active service is "accidental."

b. **Outpatient Treatment and Patient's Correspondence Folders.** [When a veteran dies, folders of this type which have been created by VHS&RA will be retained at the clinic or hospital. They will be furnished upon request if needed for a rating decision.] The outpatient treatment folder will usually be maintained at the clinic nearest the veteran's permanent residence. Pertinent data may be copied from the folders and incorporated in the XC-folder, as described in paragraph 1.05g and h.

c. **Autopsy Reports.** Autopsy reports and other clarifying evidence will be secured (see par. 45.10) when there is a question as to the following:

(1) Etiology.

(2) Identity and advancement of disease.

(3) Pathological relationships.

(4) Notations on death certificates.

d. **Evidence From Claimant.** When it is deemed necessary to request additional medical evidence from the claimant pertaining to the cause of death or for other proper purposes, no decision will be rendered by the board until the claimant has been allowed a period of 60 days to present the additional evidence. The claimant will be advised that if the requested evidence is not received within 60 days from the date of the request, a determination will be made on the basis of the evidence of record.

56.04 SERVICE CONNECTION FOR CAUSE OF DEATH

a. **General.** The criteria in 38 CFR 3.312 will be applied in determining whether a service-connected disability caused or contributed to cause of death. When the cause of death is questionable and an accurate determination is material to determine entitlement, the procedure in paragraph 56.10 will be followed.

b. **Suicide.** If death was due to suicide and a question of service connection for mental unsoundness arises, strict compliance with 38 CFR 3.302 is required. [ ] (See also par. 14.05.)

56.04.1 ENTITLEMENT TO DIC IN CERTAIN NSC DEATH CASES

a. **General.** Eligibility to payment as if death were service-connected exists when the veteran had been in receipt of total service-connected disability compensation benefits (including cases where the 100 percent rate is payable based on individual unemployability) for 10 years or more immediately preceding death; or death occurred within 10 years of discharge or retirement and the veteran had a totally disabling service-connected condition continuously from discharge until death, provided such period is at least 5 years. (See par. [39.16].

b. **Rating Required.** For all cases where service connection for cause of death is denied and the veteran had a totally disabling service-connected condition at the time of death, the issue of entitlement to DIC as if death were service-connected (38 U.S.C. [418]) must be considered and disposed of by use of the appropriate rating code.

(1) For any case in which the veteran was rated totally disabled by reason of service-connected disability for the prescribed period, but was not in receipt of compensation due to receipt of retired pay, the rating board will make a determination as to whether or not the disability was actually totally disabling over the entire period.

(2) For any case where entitlement is shown to payment as if death were service connected, and development is necessary to dispose of the issue of service connection for death, the rating board shall prepare a rating granting entitlement to 38 U.S.C. [418.]

56.05 SEVERANCE OF SERVICE CONNECTION

When it is found that a previous grant of service connection was clearly and unmistakably erroneous, the provisions of paragraph 48.07b will be applied.

56.06 DEATH PENSION RATINGS–LESS THAN 90 DAYS WARTIME SERVICE

a. **General.** When the veteran had less than 90 days wartime service, before consideration may be given to death pension benefits for a surviving spouse or child, there must be:

(1) A claim by a surviving spouse or child of the veteran, and

(2) A finding by the rating board or the Authorization Unit (par. 34.06a(3)) that the cause of death is not service connected [ ]

b. **Criteria.** Entitlement to death pension in cases when the veteran had less than 90 days wartime service must meet the requirements of 38 U.S.C. 541, 542 and ([38 CFR 3.3(b)(2)(ii), (b)(3)(i), and (b)(4)(i))]

(1) If the veteran was discharged for disability or retired for wartime disability, the board must determine whether or not the discharge was for a disability incurred or aggravated by service in line of duty without the benefit of persumptive provisions of law.

(2) If the decision is in the negative, or the veteran was not discharged for disability, the board must then determine whether:

(a) The veteran had at the time of discharge a disability incurred in or aggravated by service in line of duty, based on official service department records, as would have, in medical judgment, warranted such a discharge; or

(b) At the time of death there existed a disability directly or presumptively incurred or aggravated by wartime service pg. 57

(3) If there is a rating in effect at death so that the veteran is in receipt of or entitled to receive compensation or retirement pay by reason of wartime disability, death pension entitlement is established and reference to the board is unnecessary. This is true even though such grant of benefits is a clear and unmistakable error and action to sever service connection under [38 CFR 3.105(a)] is pending at time of death in the absence of illegality or fraud.

56.07 APPEALS

The provisions of chapter 18 are applicable to rating board decisions in death cases. When the decision of the Board of Veterans Appeals constitutes a reversal, a new rating decision will be prepared in conformity with the findings of the appellate board. (See par. 18.30.)

SUBCHAPTER II. PROOF AND CAUSE OF DEATH

56.08 PROOF OF DEATH

Proof of death is governed in general by [38 CFR 3.211].

56.09 CAUSE OF DEATH NOT SHOWN

The procedure set forth in paragraph 7.03e(1) should be followed when the cause of death is not shown.

56.10 CAUSE OF DEATH QUESTIONABLE

When proof of death under [38 CFR 3.211] does not clearly identify the cause of death or the causes recorded are considered questionable, the facts and circumstances surrounding the death will be fully developed, provided the accurate determination thereof is material to the proper rating of the case as to the cause of death or contributory cause of death under [38 CFR 3.312]. In these cases, evidence such as the following should be obtained:

a. Autopsy reports.

b. Pertinent original clinical records and hospitalization immediately preceding death.

c. Transcript of evidence introduced at coroner's or medical examiner's hearings.

d. Police reports.

e. Certifications of attending physicians, etc.

56.11 DEATH OF VETERAN PRESUMED AFTER 7 YEARS' ABSENCE

a. Since a finding of presumed death after 7 years' absence (as provided by ch. 14, subch. III) necessarily stems from a determination that the VA is unable to uncover any evidence that a veteran was alive at any time within the 7-year period, there is generally no factual basis for presuming more than the mere *fact* of death. A presumption as to *cause* of death based on evidence of a disability not more recent than 7 years old would necessarily also presume the nonintervention of another unrelated disease or injury constituting the sole cause of death.

b. However, when there is a probability that by reason of the type and severity of established service-connected disabilities, they could reasonably be accepted as having caused or contributed to the death of the veteran, the question may be submitted by referral to Central Office (212A). (See par. 14.15g.)

c. Also, when there was wartime service of less than 90 days, a rating is required to determine basic potential entitlement to pension benefits on the basis of discharge due to a service-connected disability or the existence of a service-connected disability at the time of death. (See par. 14.25b and 56.06).

56.12 FINDINGS OF FACT OF DEATH UNDER [38 CFR 3.211(f)]

When proof of death cannot be furnished, a finding of fact of death of a veteran may be made under [38 CFR 3.211(f)] (ch. 14, subch. IV). Claims which require such finding will be fully developed as to the facts and circumstances of the case and submitted to a rating board for determination as to:

a. Service connection for cause of death, or

b. Existence of a disability at time of death, or

c. Discharge from service for a service connected disability.

56.13 COMMON ACCIDENT CASES

See paragraphs 14.30 and 34.03.

SUBCHAPTER III. PREPARATION OF DEATH RATING DECISIONS

56.14 GENERAL

"Cause of death," as used herein, includes contributory cause of death. Death ratings will be prepared on VA Form 21-6796, Rating Decision, and follow the general format for disability ratings (see ch. 49). They are not for [Target entry], however, and the rules stated below apply to the preparation of the different parts of the decision.

56.15 HEADING

The heading will be completed to show:

[Block No.	Item	See Paragraph
1	RO Number	49.06g
2	Type of Rating (Death)	49.06i
4	Veteran's File Number	49.07
5	Initials and Surname of Veteran	49.09
6	Copy to (as applicable)	49.06a
7	Veteran's Social Security No. (if different than block 2)	49.08

Block No.	Item	See Paragraph
8	Date of Claim	49.06b
9	Date of This Rating	49.06c
10	Date of Birth	49.13
11	Date of Death	49.06d
12	Active Duty	49.10a]

56.16 BODY OF THE RATING

a. **Jurisdiction.** Identify the claim or other reason for board consideration, example, "VA Form 21-534 filed (date)".

b. **Issue.** Enter the issue to be resolved; e.g., service connection for cause of death.

c. **Facts.** The same general principles applicable to stating the facts in disability cases will be followed. However, when service connection for cause of death is denied, it is not necessary to recite facts regarding treatment, examinations and other medical records pertaining to clearly unrelated conditions.

(1) Only those records which could reasonably be considered as related to the issue should be set forth. If there are none, this fact will be stated. Similarly, if service connection for the cause of death is established, the facts from records pertaining only to that disability, favorable and unfavorable, should be succinctly stated.

(2) If service connection has previously been properly established for the disability which caused death, it is sufficient to state "Service connection previously established for _____." If the previous establishment of service connection was erroneous, the procedure in paragraph 48.07b will be applied.

d. **Discussion.** Generally, a discussion is not necessary. It is required only when, from the facts stated, it is desirable to explain the board's reasoning or to cite pertinent regulations or statutory provisions to justify the conclusion.

(1) Very little, if any, explanation is necessary in a death rating when it is obvious that the cause of death was unrelated to service. Similarly, only a brief explanation is required when service connection was properly established during a veteran's lifetime for a chronic active disease process and such disease was the cause of death.

(a) However, when the cause of death was the result of an injury or disease not previously service connected or was related etiologically to a previously service-connected condition, a more detailed discussion of the pertinent facts and influencing reasons or controversial factors in regard to identity or etiology will be required.

(b) Should a contributory cause of death be service connected, the explanation should contain a brief discussion of the salient facts, including medical facts and principles relied upon in the decision reached.

(2) If the evidence is conflicting or there are obscure and complex medical or legal questions to be resolved, it is essential, especially in cases involving provisions of public laws, such as 38 U.S.C. 351, that the pertinent facts be fully discussed and that the reasons relied upon to justify the decision rendered be clearly shown.

(a) In cases involving 38 U.S.C. 351, where the facts so indicate, it should be shown, if additional disability did occur, that it was merely coincidental with the existing disease or injury or natural progress, or was the usual or unusual after result of approved medical care without any element of carelessness, negligence, lack of proper skill, etc.

(b) The mere citation of reports of investigations made by the service departments or the VA is not an acceptable explanation. However, if action has been authorized by Central Office, a notation to that effect will be sufficient. (par. 33.03)

e. **Conclusion.** The rating board's conclusions on the issues involved will be expressed by use of codes from appendix A, section III. If applicable, code 1d will be the first listed on the rating sheet. Such code will be followed by other codes appropriate

to the particular case. Generally, the appropriateness and use of these codes are self-explanatory. In addition to the "notes" contained in the appendix, the following rules will be observed with respect to the codes indicated:

(1) **Code 1d.** This code will reflect only the service-connected disability which is the primary or contributory cause of death. If the primary cause of death is service connected, the contributory cause, if any, will not be rated. If only a contributory cause of death is service connected it will be rated under code 1d, but the primary cause will be rated under the appropriate denial code.

(a) If there is entitlement under more than one period of service, it will be coded under the period most favorable.

(b) All directly and presumptively service-connected disabilities in the same war or in peacetime will be included, if related to the cause of death, under the one code 1d, but wartime and peacetime incurred disabilities may not be combined under one code.

[(2)] **Code 8d [ ].** [This code] will be used when the cause or causes of death are not service connected. [This code] will also be used for the primary cause of death, when the contributory cause is rated under code 1d. If the death is not service connected all causes of death will be rated [under this code.]

56.17 DIAGNOSTIC CODES

Disabilities considered in rating service connection for cause of death or conditions existing at death will not be assigned diagnostic codes.

56.18 MEMORANDUM DECISIONS

Death rating decisions other than those in claims for death compensation of DIC to determine whether death was due to a service-connected disability or in claims for burial or accrued benefits, will be memorandum ratings. The most frequently used types are listed in paragraph 47.02. They will be prepared in the manner provided in paragraph 47.03. For burial claims, see paragraph 43.05.

a. **Gratuitous Insurance Under 38 U.S.C. 722(b)**

(1) **Requirements.** To provisions of section 722(b) require that it be determined by satisfactory evidence that:

(a) The veteran was mentally incompetent due to a service-connected disability

1. At the time of release from active service; or

2. During any part of the 1-year period from the date such person is first determined, by a rating made subsequent to discharge, to have a service-connected disability; or

3. After release from active service but is not rated service-connected disabled until death, *AND*

(b) Such person is determined to have remained continuously so mentally incompetent,

1. From the date of release from active service until death; or

2. From the date determined to be mentally incompetent during the 1-year period until death; or

3. If not rated until after death, from the date the mental incompetency began until death; *AND*

(c) Such person is shown to have died before the appointment of a guardian or within 1 year after appointment of a guardian.

(2) **Preparation of Rating.** A memorandum rating will be prepared in which the [legend] will be shown as "FOR THE PURPOSE OF INSURANCE UNDER 38 U.S.C. 722(b)."

(a) All service-connected and nonservice-connected disabilities will be shown as well as periods of competency and incompetency.

(b) Diagnosis of the disability rendering the veteran mentally incompetent will be recorded for each period of such incompetency and will be rated service connected or nonservice connected, as the case may be.

(c) The beginning and ending dates for each period of mental incompetency will be shown.

(3) **Coma Incident to Terminal State.** Brief periods of coma incident to the terminal state are commonly encountered. In the absence of other manifestations of mental incapacity to contract, manage personal affairs, or disburse funds such brief periods of coma are *insufficient* to support a rating of mental incompetency under section 722(b). The fact that service connection has been established for the cause of death does not carry with it the implication that the veteran was mentally incompetent at time of death or at any time during the critical period for purposes of section 722(b).

(4) **Suicide.** A finding in a death rating that a veteran was of unsound mind at the time of suicide under the provisions of [38 CFR 3.302] does not mean that [the veteran] was also mentally incompetent for purposes of section 722(b). A rating under that section of the law will be made on all the evidence of record, and any rating of mental incompetency, including the duration of periods of incompetency, must be supported by affirmative evidence, without benefit of presumption.

b. **Testamentary Capacity for Insurance Purposes**

(1) Cases will be submitted to the board for determination when questions regarding testamentary capacity of the insured to execute designations or changes of beneficiary and/or designations or changes of option are involved. The criteria for these determinations are set forth in [38 CFR 3.355.]

(2) A memorandum rating will be prepared preceded by the [legend], "DETERMINATION AS TO TESTAMENTARY CAPACITY FOR INSURANCE PURPOSES ONLY."

c. **Dependent's Educational Assistance.** Cases will be submitted to the board in accordance with paragraph 10.13 for determinations of basic entitlement under 38 U.S.C. ch. 35.

(1) The board will prepare a memorandum rating which will [include the legend] "FOR THE PURPOSE OF DEPENDENTS' EDUCATIONAL ASSISTANCE UNDER 38 U.S.C. CH. 35."

(2) The entire record will be reviewed to determine whether the veteran's death or permanent and total disability was a result of disease or injury incurred in or aggravated by active service under the criteria set forth in [38 CFR 3.303, 3.312 and 3.807.]

56.19 SEPARATE DECISIONS ON UNRELATED ISSUES

a. When multiple unrelated issues are involved, a separate decision will be prepared on each issue. Thus a memorandum decision "For permanent incapacity for self-support due to physical or mental disability (child)" may include a determination that the child is incompetent, but may be combined with a memorandum decision "For sanity of beneficiary in homicide case."

b. Similarly, a proper issue for a memorandum decision may not be included in a rating decision for service connection for cause of death, even though both issues are before the board at the same time, except that issues involving accrued ratings [subch. IV] or burial allowance ratings (par. 43.05) may be included in ratings for service connection for cause of death provided the issues involved do not require the resolution of obscure or complex medical or legal questions (par. 56.16d(2)). In such case, separate decisions will be prepared simultaneously. To the extent applicable, the facts stated in one decision may be incorporated in the other by reference.

56.20 REVIEW OF RATING DECISION BY SERVICE ORGANIZATION

See paragraph 45.13.

56.21 SUBSEQUENT RATING DECISIONS

When the prior death rating decision has not disposed of all issues affecting entitlement to death benefits, a supplemental rating will be confined to disposition of such remaining issue(s). If the current rating decision constitutes a reversal of a prior death rating decision, a complete rating will be required.

[SUB]CHAPTER [IV.] THE ACCRUED RATING

[56.22] GENERAL

Accrued rating decisions are made after a veteran's death on pending disability claims to cover periods prior to death and are governed generally by procedures applicable to disability ratings. They are limited by 38 U.S.C. 3021 to periods of not more than 1 year prior to death and claim for the accrued must be filed within 1 year after death. Entitlement must be based on evidence *in file* at date of death (see par. 57.03a). A disability rating decision made after veteran's death without knowledge of his/her death is void and, if a claim for accrued benefits is timely filed, an accrued rating decision is required.

[56.23] PENDING CLAIMS AT DEATH

a. Any claim, including a claim for increased benefits such as aid and attendance or housebound allowance in veteran's, surviving spouse's or parent's cases, which has not been completely adjudicated at time of death, is a pending claim. A claim for disability pension only will be accepted as an informal claim for disability compensation, and vice versa, if a claim for accrued is filed within 1 year of the date of receipt of the disability claim. (See also par. 37.04.)

b. When instructions for the implementation of new legislation or a change in VA criteria provides for a general review of disability ratings *without action on the part of the veteran* and effective dates are not contingent upon a new claim, formal or informal, and such review is applicable to the veteran's claim but was not made prior to death, it will be considered that there is a claim pending at death requiring the rating board to conduct such review for accrued purposes.

c. Any case in which the denial of service connection for a compensable disability is found to constitute clear and unmistakable error will be considered to be a "claim pending at death."

d. Accrued benefits are not available for the month of death except when the benefit is Emergency or Reserve Officers retirement pay (38 U.S.C. 3012(b)(1) and par. 37.13b(1)). Therefore, the rating action will be required when the veteran would have been entitled to benefits (or increased benefits) *commencing* in the month of death, if it is necessary to establish the veteran's rate of benefits that may be payable to the surviving spouse (only) for the month of death under 38 U.S.C. 3110. (See par. 39.04b.) Such ratings will be prepared as provided in paragraph 57.04 except that [the legend] will be shown as "FOR PURPOSE OF 38 U.S.C. 3110 ONLY."

NOTE: In cases involving Emergency or Reserve Officers retirement pay when entitlement is to be determined for a period prior to the month of death and for the month of death, the [legend will be] "FOR PURPOSES OF 38 U.S.C. 3021 AND 3310."

[56.24] EVIDENTIARY REQUIREMENTS

a. **Evidence in File at Date of Death.** Evidence "in file" will be interpreted to include the following even if such reports are not reduced to writing or are not physically placed in file until after death:

(1) Service department records

(2) Reports of VA hospitalization

(3) Reports of treatment or examinations of VA medical centers including those in outpatient treatment folders.

(4) Reports of hospitalization, treatment or examinations authorized by the VA.

(5) Reports of autopsy made by the VA on the date of death.

NOTE: It is important to note that rating decisions cannot be made for accrued amounts until all such evidence is secured by the rating board. (See also par. 37.07).

b. **Evidence Essentially Complete.** [38 CFR 3.1000(d)(4)] permits favorable action under 38 U.S.C. 3021 on the basis of the evidence as a whole when essentially complete and "in file" at time of death. This eliminates certain technical requirements applicable to live cases, such as the certification of testimony (par. 7.05) or the necessity of a "VA examination" before rating for compensation. (See also [38 CFR 3.327(b)(1)] and par. 55.01b.) The cited regulations also provide for the acceptance of evidence after death for verifying or corroborating evidence "in file" at death.

[56.25] PREPARATION OF ACCRUED RATING DECISIONS

a. **Disability Claims.** An accrued rating decision has essentially the same format as a disability rating decision and will be prepared as provided in chapter 49, except:

(1) **Heading.** Since accrued rating decisions are *not* [entered on target], the heading will be prepared as for a death rating (par. 56.15).

[(2) **Legend.**] Immediately following the heading, [the legend] will be entered in capital letters "FOR PURPOSE OF 38 U.S.C. 3021 ONLY" except when the entitlement of a surviving spouse for the month of death is to be determined as provided in paragraph 57.02d.

[(3)] **Facts.** In addition to all the requirements of disability cases (par. 49.17f), the facts will specifically distinguish between the evidence "in file" on date of death and evidence received later.

b. **Death Cases—Surviving Spouse Aid and Attendance or Housebound and Parent Aid and Attendance Claims.** An accrued rating decision for this purpose has essentially the same format as a regular memorandum rating for aid and attendance (par. 47.06) except:

(1) **[Legend].** Immediately following the heading, [the legend] will be entered in capital letters "FOR PURPOSE OF 38 U.S.C. 3021 ONLY."

[(2)] **Facts.** In addition to the normal material usually included for such cases, the date of death of the claimant will be shown and the facts will specifically distinguish between the evidence "in file" on date of death and evidence received later.

[56.26] APPEALS

a. **Pending at Death.** An appeal from a disability rating decision which is pending at time of death will be handled according to paragraph 18.30. Upon receipt of a claim for accrued benefits, the board of original jurisdiction will apply the procedures and policies governing ratings for accrued benefits in its review of the case.

b. **Filed After Death.** Appeals on accrued rating decisions, including administrative appeals, will be governed by the regular appeals procedure.

c. **Reversal on Appeal.** When an accrued rating decision or a disability rating decision in appeal status at time of death is reversed by the Board of Veterans Appeals, appropriate amended rating action will be taken to reflect the appellate decision.

CHAPTER 57. THE ACCRUED RATING

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CHAPTER 57. THE ACCRUED RATING

57.01 GENERAL

Accrued rating decisions are made after a veteran's death on pending disability claims to cover periods prior to death and are governed generally by procedures applicable to disability ratings. They are limited by 38 U.S.C. 3021 to periods of not more than 1 year prior to death and claim for the accrued must be filed within 1 year after death. Entitlement must be based on evidence *in file* at date of death (see par. 57.03a). A disability rating decision made after veteran's death without knowledge of his/her death is void and, if a claim for accrued benefits is timely filed, an accrued rating decision is required.

57.02 PENDING CLAIMS AT DEATH

a. Any [ ] claim, including [a claim for increased benefits such as aid and attendance or housebound allowance in veteran's, surviving spouse's or parent's cases], which has not been completely adjudicated at time of death, is a pending claim. A claim for disability pension only will be accepted as an informal claim for disability compensation, and vice versa, if a claim for accrued is filed within 1 year of the date of receipt of the disability claim. (See also par. 37.04.)

b. When instructions for the implementation of new legislation or a change in VA criteria provides for a general review of disability ratings *without action on the part of the veteran* and effective dates are not contingent upon a new claim, formal or informal, and such review is applicable to the veteran's claim but was not made prior to death, it will be considered that there is a claim pending at death requiring the rating board to conduct such review for accrued purposes.

c. Any case in which the denial of service connection for a compensable disability is found to constitute clear and unmistakable error will be considered to be a "claim pending at death."

d. Accrued benefits are not available for the month of death except when the benefit is Emergency or Reserve Officers retirement pay (38 U.S.C. 3012(b)(1) and par. 37.13b(1)). Therefore, rating action will be required when the veteran would have been entitled to benefits (or increased benefits) *commencing* in the month of death, if it is necessary to establish the veteran's rate of benefits that may be payable to the surviving spouse (only) for the month of death under 38 U.S.C. 3110. (See par. 39.04b.) Such ratings will be prepared as provided in paragraph 57.04 except that it will be shown as "FOR PURPOSE OF 38 U.S.C. 3110 ONLY."

NOTE: In cases involving Emergency or Reserve Officers retirement pay when entitlement is to be determined for a period prior to the month of death and for the month of death, the rating will include the statement "FOR PURPOSES OF 38 U.S.C. 3021 AND 3310."

57.03 EVIDENTIARY REQUIREMENTS

a. **Evidence in File at Date of Death.** Evidence "in file" will be interpreted to include the following even if such reports are not reduced to writing or are not physically placed in file until after death:

(1) Service department records

(2) Reports of VA hospitalization

(3) Reports of treatment or examinations at VA medical centers including those in outpatient treatment folders.

(4) Reports of hospitalization, treatment or examinations authorized by the VA.

(5) Reports of autopsy made by the VA on the date of death.

NOTE: It is important to note that rating decisions cannot be made for accrued amounts until all such evidence is secured by the rating board. (See also par. 37.07).

b. **Evidence Essentially Complete.** VAR 2000(D)(4) permits favorable action under 38 U.S.C. 3021 on the basis of the evidence as a whole when essentially complete and "in file" at time of death. This eliminates certain technical requirements applicable to live cases, such as the certification of testimony (par. 7.05) or the necessity of a "VA examination" before rating for compensation. (See also VAR 1327(B)(1) and par. 55.01b.) The cited regulations also provide for the acceptance of evidence after death for verifying or corroborating evidence "in file" at death.

57.04 PREPARATION OF ACCRUED RATING DECISIONS

[a. **Disability Claims.**] An accrued rating decision has essentially the same format as a disability rating decision and will be prepared as provided in chapter 49, except:

[(1)] **Heading.** Since accrued rating decisions are *not input*, the heading will be prepared as for a death rating (par. 56.15). Immediately following the heading, there will be entered in capital letters "FOR PURPOSE OF 38 U.S.C. 3021 ONLY" except when the entitlement of a [surviving spouse] for the month of death is to be determined as provided in paragraph 57.02d.

[(2)] **Jurisdiction.** After indicating the type of claim, the date of its receipt will be entered to show that the 1-year time limit was met.

[(3)] **Issue.** As in disability cases (par. 49.17e).

[(4)] **Facts.** In addition to all the requirements of disability cases (par. 49.17f), the facts will specifically distinguish between the evidence "in file" on date of death and evidence received later.

[(5)] **Conclusion.** As in disability cases (par. 49.17h)

[b. **Death Cases--Surviving Spouse Aid and Attendance or Housebound and Parent Aid and Attendance Claims.** An accrued rating decision for this purpose has essentially the same format as a regular memorandum rating for aid and attendance (par. 47.06) except:

(1) **Heading.** Immediately following the heading, there will be entered in capital letters "FOR PURPOSE OF 38 USC 3021 ONLY."

(2) **Jurisdiction.** After indicating the type of claim, the date of its receipt will be entered to show that the 1-year time limit will be met.

(3) **Facts.** In addition to the normal material usually included for such cases, the date of death of the claimant will be shown and the facts will specifically distinguish between the evidence "in file" on date of death and evidence received later.]

57.05 APPEALS

a. **Pending at Death.** An appeal from a disability rating decision which is pending at time of death will be handled according to paragraph 18.30. Upon receipt of a claim for accrued benefits, the board of original jurisdiction will apply the procedures and policies governing ratings for accrued benefits in its review of the case.

b. ***Filed After Death.*** Appeals on accrued rating decisions, including administrative appeals, will be governed by the regular appeals procedure.

c. **Reversal on Appeal.** When an accrued rating decision or a disability rating decision in appeal status at time of death is reversed by the Board of Veterans Appeals, appropriate amended rating action will be taken to reflect the appellate decision.

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